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# Federal Register

Tuesday
September 11, 1984



## Selected Subjects

**Air Pollution Control**
Environmental Protection Agency

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Federal Aviation Administration

**Aviation Safety**
Federal Aviation Administration

**Bridges**
Coast Guard

**Civil Rights**
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**Radio**
Federal Communications Commission

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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# Presidential Documents

Title 3—

The President

## Memorandum of September 6, 1984

## Copper Import Relief Determination

**Memorandum for the United States Trade Representative**

Pursuant to Section 202(b)(1) of the Trade Act of 1974 (P.L. 93–618), I have determined the action I will take with respect to the report of the United States International Trade Commission (USITC), transmitted to me on July 16 concerning the results of its investigation, on the merits of providing import relief to the copper industry.

In view of all relevant aspects of this case, I have determined that granting import relief is not consistent with our national economic interest. The imposition of import restrictions—either in the form of quotas, tariffs, or orderly marketing agreements—would create a differential between U.S. and world copper prices. Consequently, it would seriously disadvantage the copper-fabricating industry in the United States, which employed an estimated 106,000 workers in 1983, vis-a-vis foreign competitors. Such a result would, over time, shrink domestic demand for copper and add to the serious problems faced by U.S. copper producers.

Import relief would also adversely affect the export earnings of the foreign copper-producing countries, many of which are heavily indebted and highly dependent on copper exports. It would, therefore, complicate our efforts to maintain the stability of the international financial system and lessen the ability of foreign countries to import goods from the United States. Finally, there are encouraging signs that the economic recovery is beginning to have a favorable effect on world copper prices; stocks have fallen considerably this year and a significant price increase is expected in the near future. The denial of import relief on copper should act as a signal and as encouragement to our partners around the world to resist protectionist acts and, thus, will foster that recovery.

In order to help ease the difficult problems now faced by many workers in the U.S. copper industry, I have directed the Secretary of Labor to work with State and local officials to develop a plan of job retraining and relocation assistance for workers in affected industries. In addition, I have directed the Secretary of Commerce to actively monitor the domestic copper industry including inventories and the levels of copper imports.

**Editorial note:** The Office of the Federal Register was requested to print the memorandum in the **Federal Register** by the Executive Clerk at the White House, pursuant to Section 202(b)(1) of the Trade Act of 1974.

Ronald Reagan

THE WHITE HOUSE,
*Washington, September 6, 1984.*

[FR Doc. 84-24000
Filed 9-7-84; 2:45 pm]
Billing code 3195-01-M

# Rules and Regulations

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 40

### Glass Enamel and Glass Enamel Frit Containing Small Amounts of Uranium

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to delete an exemption from licensing requirements applicable to the possession and use of glass enamel and glass enamel frit containing small amounts of source material thereby preventing the future domestic manufacture or importation of these materials without a specific NRC license. These materials are used to produce brightly colored surfaces on consumer products such as cloisonne jewelry. The rule is intended to prevent unnecessary radiation exposure that may be received by artists who use these materials or by consumers who use the products containing these materials. On July 25, 1983, the NRC suspended the subject exemption until this rulemaking action was completed.

**EFFECTIVE DATE:** September 11, 1984.

**ADDRESS:** Copies of the Regulatory Analysis may be examined at the NRC Public Document Room, 1717 H Street NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443–7902.

**SUPPLEMENTARY INFORMATION:** On April 30, 1984, the Nuclear Regulatory Commission published in the **Federal Register** (49 FR 18308) a notice of proposed rulemaking that would amend 10 CFR Part 40 to delete an exemption from licensing requirements for the possession and use of source material contained in glass enamel and glass enamel frit. These materials are used to produce brightly colored surfaces on consumer products such as certain types of cloisonne jewelry. The proposed rule provided a period of 60 days for public comment. Six comments were received.

The exemption from licensing requirements for the receipt, possession, use, transfer or import of source material contained in glass enamel and glass enamel frit (not more than 10 percent by weight of source material) was adopted by the Atomic Energy Commission, the NRC's predecessor, on November 17, 1964. Following the identification, in late 1982 and early 1983, of some pieces of cloisonne jewelry being distributed throughout the United States that contained uranium, the NRC adopted a final rule (48 FR 33697, July 25, 1983) suspending this exemption. Because available information indicated that all the cloisonne jewelry found to contain uranium has been imported, the suspension has had the effect of prohibiting the further importation of this jewelry.

Six public comments were received on the proposed rule. Two comments were from the public, one from industry, two from State agencies, and the other from another Federal agency.

Five comments supported the proposed rule. Most commenters stated that the proposed rule, if adopted, will prevent unnecessary exposure to radiation. One commenter was pleased to note that the Commission has concurred with a report by the Federal Radiation Council (FRC) stating "There should not be any man-made radiation exposure without the expectation of benefit resulting from the exposure." Another commenter stated that he can find no reason to deliberately incorporate radioactive materials into items of marginal or questionable benefit to anyone even though the risk is shown to be miniscule.

One comment opposed the proposed rule. The commenter stated that: (1) there are no scientific, technical or regulatory justifications for eliminating the current exemption; (2) if indeed there were a real health risk consideration associated with manufactured goods from the material, the proposed amendment would be inadequate to address it, in that it does permit continued use of existing supplies and manufactured items; (3) furthermore, the NRC does not propose to remove the current exemption from licensing requirements for the possession, use, transfer or delivery of small quantities of source material or of goods containing various quantities of source material.

The NRC estimated that the radiological risk is expected to be 2 to 4 in a million for skin cancer incidence assuming an individual wearing the jewelry for about 520 hours per year. The NRC agrees that the use of the jewelry does not constitute an immediate or significant health hazard; thus the NRC did not prohibit the use, possession, or transfer of these materials or products that have already been distributed. However, the FRC guidelines approved by the President and the NRC's policy of making every reasonable effort to prevent unnecessary radiation exposures would provide sufficient justification to adopt the proposed rule even though the risk is small. On the comment concerning other exemptions currently provided in the regulations, each exemption was evaluated before it was adopted for exemption, except for certain long-standing uses of source material in products that antedate the atomic energy program. The NRC believes that the current regulations on consumer products are, in general, adequate to protect public health and safety. However, if any situations (such as the situation on cloisonne jewelry) arise that might cause NRC to reevaluate a specific exemption, the NRC will reevaluate that exemption. This will be done on a case-by-case basis.

One commenter asked: "Since the radiation consists mainly of beta particles, might not the metal mountings of the jewelry become radioactive, as well?" The metal mounting will not become radioactive from beta particles because beta particles cannot make other materials radioactive. The same commenter also suggested that the NRC issue a public statement to warn individuals of the presence of uranium in these enamels. The NRC did issue two public announcements on this subject: one on February 1, 1983 when the radioactive cloisonne jewelry was identified, and the other on July 25, 1983 when the exemption was suspended.

Since the final rule merely codifies the suspension announced in July 1983, the NRC does not believe any further public statement is needed beyond this final rule.

After careful consideration of the comments on the notice of proposed rulemaking, the NRC has adopted the rule in final form, which is the same as the proposed rule. The final rule, effective upon publication in the **Federal Register**, prohibits receipt, possession, use, transfer and importation of glass enamel or glass enamel frit containing uranium unless specifically authorized by NRC. However, the rule continues to allow persons to receive, use, or transfer, without a license, glass enamel and glass enamel frit, or products containing these materials, imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983, the date of the suspension of this exemption.

The NRC's jurisdiction extends only to the source material contained in glass enamel or glass enamel frit. Glass enamel or glass enamel frit which does not contain uranium may be imported, manufactured, and distributed in the normal course of business without a NRC license.

The effects of the rule on the industry and the public are expected to be very small. Because of the continuing exemption of the glass enamel or glass enamel frit containing uranium already manufactured or imported, and the fact that there are now no manufacturers of these materials in the U.S., the economic impact, including the impact on small entities would be negligible. The economic impact of this amendment for importers is also expected to be very small because nonradioactive alternatives to the use of uranium in producing the desired colors exist.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

**Paperwork Reduction Act Statement**

This amendment contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**Regulatory Analysis**

The NRC has prepared a regulatory analysis on this rule. The analysis examines the alternatives considered by the NRC. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW, Washington, DC. Single copies of the analysis may be obtained from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7902. The Commission requested public comment on the draft regulatory analysis and no comment was received.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act of 1980 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon substantial number of small entities. This final rule prohibits the future domestic manufacturing or importation of glass enamel or glass enamel frit containing uranium. Currently, no domestic manufacturer is producing glass enamel or glass enamel frit containing uranium. Furthermore, nonradioactive alternatives exist and are available to importers. As a result, the NRC believes that the economic impact of the rule on small entities or any other affected party will be negligible. The Commission requested public comment on the economic impact on small entities and one comment was received. The commenter stated that this rule would not affect any United States company since none currently make this product now.

**List of Subjects in 10 CFR Part 40**

Government contracts, hazardous materials-transportation, nuclear materials, penalty, reporting and recordkeeping requirements, source material, uranium.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the following amendment to 10 CFR Part 40 is published as a document subject to codification.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

The authority citation for Part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95-604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688 (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 40.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)-(3), 40.35(a)-(d), 40.41 (b) and (c), 40.46, 50.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d) (3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

1. In § 40.13, footnote 1 to paragraph (c)(2)(iii) is removed, paragraph (c)(2)(iii) is revised, and paragraph (c)(2)(iv) is added to read as follows:

**§ 40.13 Unimportant quantities of source material**

* * * * * *

(c) * * *

(2) * * *

(iii) glassware containing not more than 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction;

(iv) glass enamel or glass enamel frit containing not more than 10 percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983.[1]

* * * * *

Dated at Bethesda, Maryland, this 23d day of August, 1984.

For the Nuclear Regulatory Commission.

**William J. Dircks,**

*Executive Director for Operations.*

[FR Doc. 84-24008 Filed 9-10-84; 8:45 am]

BILLING CODE 7590-01-M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 84-ANE-7; Amdt. No. 39-4901]**

### Airworthiness Directives; Alexander Schleicher, Model ASW-19 and ASW-19B

**AGENCY:** Federal Aviation Administration (FAA), DOT.

[1] On July 25, 1983, the exemption of glass enamel or glass enamel frit was suspended. The exemption was eliminated on September 11, 1984.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Alexander Schleicher Model ASW 19 and ASW 19B gliders by individual letters. The AD requires an airspeed limitation. The AD also provides for a modification which, when incorporated, will no longer require the airspeed limitation. The AD is needed to preclude the glider from entering into the airspeed range where tailplane flutter has been shown to occur.

**EFFECTIVE DATE:** September 13, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84–13–04 issued June 26, 1984, which contained this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 13, 1984.

*Compliance Schedule*—as prescribed in the body of the AD.

**ADDRESS:** The applicable technical note may be obtained from Alexander Schleicher Segelflugzeubau, D–6416 Poppenhausen, Federal Republic of Germany. A copy of the technical note is contained in the Rules Docket at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Munro Dearing, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 or Cheryl McCabe, ANE–152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7329.

**SUPPLEMENTARY INFORMATION:** On June 26, 1984, priority letter AD 84–13–04 was issued and made effective immediately as to all known U.S. owners and operators of Alexander Schleicher Model ASW 19 and ASW 19B gliders. The AD required a reduction in the airspeed limitation. The AD also provided for a modification which, when incorporated, will no longer require the airspeed limitation. AD action was necessary to prevent the gliders from entering into the airspeed range where tailplane flutter has been shown to occur.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued June 26, 1984, to all known U.S. owners and operators of certain Alexander Schleicher Model ASW 19 and ASW 19B gliders.

These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation of analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety, and Incorporation by reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Alexander Schleicher:** Applies to Model ASW 19 and ASW 19B gliders, serial numbers 19001 to 19402, except 19019 and 19210, certificated in all categories.

Compliance required prior to next flight unless already accomplished.

To prevent the occurrence of horizontal tailplane flutter, accomplish the following:

1. Apply a red radial line on the airspeed indicator at 108 Kts (200 km/h) to indicate the new Never Exceed Velocity (VNE).

2. Affix a placard stating "Maximum Speed 108 Kts (200 km/h)" placed next to the airspeed indicator.

3. Enter a notation in the glider flight manual in the airspeed limitations section to read as follows.

| | |
|---|---|
| Max speed to 10,000' MSL | 108 Kts. (200 km/h). |
| 10,001 to 16,400' MSL | 80 Kts. (155 km/h). |
| 16,401 to 23,000' MSL | 75 Kts. (140 km/h). |
| 23,001 to 29,500' MSL | 65 Kts. (120 km/h). |

4. Compliance with this AD is not required when the elevator trailing edge contour change modification described in Alexander Scheicher Technical Note No. 17, dated March 27, 1984, is incorporated.

5. Alternate inspections, adjustment of the inspection interval, or other actions which provide an equivalent level of safety must be approved by the Manager, Brussels Aircraft Certification Office, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium, telephone 513.38.30 x2710.

The Alexander Schleicher Technical Note No. 17, dated March 27, 1984, identified and described in this directive is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Alexander Schleicher Segelflugzeubau, D–6414 Poppenhausen, Federal Republic of Germany. These documents may also be examined at the Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by priority letter AD 84–13–04, issued June 26, 1984, which contained this amendment.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.89)

**Note.**—The incorporation by reference provisions of this document were approved by the Director of the **Federal Register**, on September 13, 1984. The referenced technical notes are available at the **Federal Register**.

Issued in Burlington, Massachusetts, on August 10, 1984.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 84–23886 Filed 9–10–84; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 84–NM–27–AD; Amdt. 39–4910]**

## Airworthiness Directives; British Aerospace Model DH/HS/BH 125 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to British Aerospace Model DH/HS/BH 125 series airplanes which requires

inspections, modifications, or replacements, as necessary, of certain landing gear components. Cracks in the attachment lugs of the main landing gear jack cylinder head and in components of the landing gear emergency selector shaft assembly have been reported. Also, certain brake control valves have not been fitted with new knife edges during overhaul. These conditions have the potential of leading to landing gear or brake failure.

**DATE:** Effective October 14, 1984.

**ADDRESS:** The applicable service information may be obtained from British Aerospace, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspections, modifications, and replacements of certain landing gear components of British Aerospace Model DH/HS/BH 125 series airplanes was published in the **Federal Register** on May 21, 1984 (49 FR 21346), and interested persons have been afforded an opportunity to participate in the making of this amendment. No comments have been received.

It is estimated that 70 airplanes will have to incorporate modification No. 251714 [Service Bulletin 32-59-(1714)]; it will take 10 manhours per airplane to accomplish the work; and repair parts are estimated at $1,123 per airplane. It is estimated that 50 airplanes will have to replace the knife edges (Service Bulletin 32-193); it will take 5 manhours to accomplish this work and repair parts are estimated at $250 per airplane. It is estimated that 270 airplanes will require inspections of the attachment lugs (Service Bulletin 32-A197); it will take one manhour to accomplish the inspection and repair parts, if needed, are estimated at $2,700 per airplane. The average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $868,910. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model DH/HS/BH 125 airplanes, series and serial numbers listed in the Planning Information section of the service bulletins referenced below, certificated in all categories. Compliance is required as indicated, unless previously accomplished.

To prevent landing gear and brake failure, within the next 90 days after the effective date of this AD, accomplish the following:

A. Incorporate British Aerospace modification No. 251714 to the landing gear emergency selector shaft assembly in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32-59-(1714), Revision 3, dated June 23, 1983.

B. Replace the knife edges of the brake control valves that have been overhauled by Dunlop Aviation Incorporated (California), with new parts in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32-193, Revision 1, dated July 26, 1983.

C. Inspect the main landing gear jacks for cracks, and replace the jacks if necessary, in accordance with the instructions of British Aerospace HS 125 Service Bulletin 32-A197, dated August 29, 1983.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective October 14, 1984.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, British Aerospace Model DH/HS/BH 125 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23900 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 84-ANE-5; Amdt. 39-4900]**

## Airworthiness Directives; Garrett Turbine Engine Co., Engine Models ATF3-6-4C, -6A-3C, and -6A-4C

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Garrett Turbine Engine Company ATF3-6 and -6A series engines by individual telegrams. The AD requires an initial and interim inspections as well as eventual modification of certain exhaust deflector liner and seal assemblies to assure that they are not loose and have not made contact with the turbine rotor. The AD is needed to prevent detachment of the exhaust splitter labyrinth seal which could result in an uncontained engine failure.

**DATES:** Effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD No. T84-11-51 issued May 25, 1984.

Compliance required as indicated in the body of this AD, unless already accomplished.

Incorporation by Reference—Approved by the Director of the **Federal Register** September 13, 1984.

**ADDRESSES:** The applicable service information and maintenance manuals may be obtained from Garrett Turbine Engine Company, P.O. Box 5217, Phoenix, Arizona 85010; telephone 602-231-1000.

A copy of these service documents are contained in the Rules Docket, New England Region, Office of the Regional Counsel, Attn: Docket No. 84-ANE-5, 12

New England Executive Park, Burlington, Massachusetts 01803.

**FOR FURTHER INFORMATION CONTACT:** Bill Moring, Aerospace Engineer, ANM-174W, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; telephone 213-535-6382.

**SUPPLEMENTARY INFORMATION:** On May 25, 1984, telegraphic AD No. T84-11-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Garrett Turbine Engine Company Model ATF3-6-4C, -6A-3C, -6A-4C Engines. The AD reguires an initial and interim inspections as well as eventual modification of certain exhaust deflector liner and seal assemblies to assure that they are not loose and have not made contact with the turbine rotor. AD action was necessary to prevent detachment of the exhaust splitter labyrinth seal which could result in an uncontained engine failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams issued May 25, 1984, to all known U.S. owners and operators of certain Garrett Turbine Engine Company Model ATF3-6-4C, -6A-3C, and -6A-4C Engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

**List of Subjects in 14 CFR Part 39**

Engines, Air Transporation, Aircraft, Aviation Safety, Incorporation by Reference.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

**Garrett Turbine Engine Company** (GTEC, formerly AiResearch Manfacturing Company of Arizona): Applicable to all engine models ATF3-6-4C, -6A-3C and -6A-4C with exhaust deflector liner and seal assembly, Garrett Part Number (P/N) 3001313-11 thru -14 installed.

Compliance is required as indicated unless already accomplished.

To prevent the possibility of an uncontained engine failure, accomplish the following:

A. For engines with an exhaust deflector liner and seal assembly, Garrett P/N 3001313-11 through -14, with less than 295 operational hours since last installed in the engine, inspections required by paragraphs B, C, and E of this AD must be accomplished until incorporation of the exhaust deflector liner and seal assembly bolted flange system as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6092, dated May 25, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

B. Within the next five operational hours after the effective date of this AD, visually inspect the stationary seal/sixth stage low pressure turbine rotor assembly area of all ATF3-6-4C model engines for evidence of seal/rotor contact and/or seal looseness as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6089, dated April 16, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

C. Within the next five operational hours after the effective date of this AD, visually inspect the stationary seal/sixth stage low pressure turbine rotor assembly area of all ATF3-6A-3C and -6A-4C model engines for evidence of seal/rotor contact and/or seal looseness as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6090, dated April 16, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

D. Engines which successfully meet inspection requirements in paragraphs B. or C. above, may be continued in service under the provisions of paragraph E. of this AD.

E. Prior to the accumulation of an additional eight hours in service, after accomplishing the inpsection in paragraph B. or C. above, or within five operational hours after the effective date of this AD, whichever comes later, and at intervals not to exceed eight operational hours thereafter, until the exhaust deflector liner and seal assembly, P/N 3001313-11 through -14, has accumulated in excess of eighty hours operating time and service since last installed in the engine, visually inspect the stationary seal/sixth stage low pressure turbine rotor asssembly area of all affected engines for evidence of seal/rotor contact and/or seal looseness as specified in the following GTEC Light Maintenance Manual Revisions, or equivalent approved by the Manager, Western Aircraft Certification Office:

| Engine model | Manual reference |
|---|---|
| ATF3-6-4C | Light Maintenance Manual Report No. 72-00-52, Revision 6, dated Nov. 15, 1983; Temporary Revision No. 72-90, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-88, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-89, 72-00-00, Trouble Shooting, dated Apr. 16, 1984. |
| ATF3-6A-3C | Light Maintenance Manual Report No. 72-03-32, Revision 3, dated Nov. 15, 1983; Temporary Revision No. 72-45, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-43, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-44, 72-00-00, Trouble Shooting, dated Apr. 16, 1984. |
| ATF3-6A-4C | Light Maintenance Manual Report No. 72-03-42, Revision 4, dated Nov. 15, 1983; Temporary Revision No. 72-46, 72-00-00, Inspection, dated May 25, 1984; Temporary Revision No. 72-44, 72-00-00, Trouble Shooting, dated Apr. 16, 1984; and Temporary Revision No. 72-45, 72-00-00, Trouble Shooting dated Apr. 15, 1984. |

**Note**—Periodic measurements of the engine interstage turbine temperature (ITT) which are required to be recorded by an FAA approved revision to the limitations section of the flight manual of the airplane may be approved as an equivalent method to the interim inspections specified in paragraph E. of this AD.

F. Engines with unsuccessful inspection results found during the accomplishment of paragraphs B. C., or E., above, are to be disassembled as required to inspect, modify, or replace exhaust deflector liner and seal assembly and sixth stage low pressure turbine rotor assembly, prior to further flight.

G. Upon removal of the sixth stage low pressure turbine rotor assembly from an affected engine for any reason, incorporate the new exhaust deflector liner and seal assembly bolted flange system as specified in section 2.A., "Accomplishment Instructions," of GTEC SB ATF3-72-6092, dated May 25, 1984, or equivalent approved by the Manager, Western Aircraft Certification Office.

Aircraft may be ferried in accordance with the provisions of Federal Aviation Regulations (FARs) 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request of an operator, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Western Aircraft Certification Office, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Garrett Turbine Engine Company, 111 South 34th St., P.O. Box 5217, Phoenix, Arizona 85010; telephone (602) 231-1000. These documents also may be examined at FAA Rules Docket 84-ANE-5, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective September 13, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD No. T84-11-51, issued May 25, 1984.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

**Note.**—The FAA has determined that this regulation only involves 28 aircraft and will

cost approximately $40,000 per aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

Issued in Burlington, Massachusetts, on August 17, 1984.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 84-23885 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 84-NM-76-AD; Amdt. 39-4908]**

## Airworthiness Directive; Gates Learjet Model 23, 24, 25, 28, 29, 35, 36 and 55 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) that requires inspection of the flap sector mounting brackets for cracks, and inspection of the flap system for interference and proper rigging. This action is the result of several reports of the mounting brackets failing wherein two such failures resulted in an inflight asymmetric flap condition. The inspections and replacement of cracked brackets are necessary to preclude total bracket failures that may in turn affect the operation of the flaps and flap actuated switches.

**DATE:** Effective September 19, 1984.

Compliance schedule as prescribed in the body of the AD.

**ADDRESSES:** The following Gates Learjet Service Bulletins pertain to this matter: SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A, all dated June 20, 1984. These bulletins may be obtained from Gates Learjet Corporation, P.O. Box 7707, Wichita, Kansas 67277; telephone (316) 946-2000.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Beene, Airframe Branch, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4408.

**SUPPLEMENTARY INFORMATION:** Two incidents have occurred on Learjet Model 55 airplanes in which both the upper and lower flap sector brackets in one wing failed in flight causing an asymmetric flap extension. In the first, the pilot selected flaps up and both flaps retracted fully, permitting the airplane to be landed flaps up. There was additional damage to a spoiler extension line fitting that resulted in loss of hydraulic fluid. In the second, the pilot was able to control a strong right roll, resulting from an estimated 20°/8° asymmetric flap, to effect the landing. Inspection on this airplane indicated failure of both brackets in the right wing and failure of the upper bracket in the left wing.

The primary causal factor in these bracket failures appears to be interference between the flap support brackets and the flap track. This interference, believed due to misrigging or assembly tolerance effects, creates excessive unsymmetric loads on the system that ultimately causes the bracket to fail. Besides impairing flap extension, bracket failures can cause the flap extension switch, located on the loose sector, to transmit a false gear warning horn signal or an incorrectly biased stall warning signal. This could cause the stall warning and stick pusher to operate at the wrong speed and cause the angle-of-attack system to give false indications. An asymmetric flap condition in combination with false indications could cause loss of an airplane.

Since the condition described herein is likely to exist or develop on other airplanes of the same type design, an AD is being issued, applicable to Gates Learjet Model 23, 24, 25, 28, 29, 35, 36 and 55 series airplanes. The AD requires a one-time inspection of the flap sector mounting brackets for cracks, the flap system for interference, and proper rigging in accordance with the instructions provided in Gates Learjet Service Bulletins SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Gates Learjet:** Applies to the following model/series airplanes certificated in all categories.

| Model | Serial Numbers |
|---|---|
| 23 | 003 through 099. |
| 24 | 100 through 357. |
| 25 | 003 through 369. |
| 28 | 001 through 005. |
| 29 | 001 through 004. |
| 35 | 001 through 531. |
| 36 | 001 through 053. |
| 55 | 001 through 109. |

Compliance required as indicated unless already accomplished. To prevent impairment of flap operation, an asymmetric flap condition, false gear warning horn signals, or incorrect biasing of the stall warning system due to flap sector bracket failures, accomplish the following:

A. Within the next 75 hours time in service, inspect the flap sector mounting brackets for cracks and flap system for interference and proper rigging in accordance with the instructions in Gates Learjet Corporation Service Bulletins SB 23-331, SB 24/25-330A, SB 28/29-27-6A, SB 35/36-27-15A, and SB 55-27-4A.

B. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4400.

This Amendment becomes effective September 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington, on August 30, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23901 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-19-AD; Amdt. 39-4909]

## Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends an existing airworthiness directive (AD) 80-06-04, applicable to certain McDonnell Douglas Model DC-9-10 through -40 and (Military) C-9 series airplanes, that requires inspection, and replacement if necessary, of the main landing gear (MLG) attach fittings. This amendment is prompted by additional reports of cracks found in the MLG fitting, the failure of which could result in significant damage to the MLG fitting support structure in the wing and possible collapse of the landing gear. This amendment requires inspections and treatment of the MLG attach fittings for stress corrosion cracks and also provides terminating action.

**DATE:** Effective October 14, 1984.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include a new airworthiness directive (AD) to require repetitive inspections, and replacement if necessary, of the main landing gear (MLG) attach fittings on certain McDonnell Douglas Model DC-9 airplanes not previously modified in accordance with Option I of McDonnell Douglas Service Bulletin 57-125 was published in the **Federal Register** April 30, 1984 (49 FR 18311). The comment period for the proposal closed on June 15, 1984.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Two comments were received. One commenter felt that the compliance time for the final rule should be 18 months and not the September 1, 1985, date, as proposed in the NPRM. The FAA considers that the September 1, 1985, compliance date (18 months from the issuance of Service Bulletin 57-125, Revision 4) is appropriate. This is based upon the anticipated effective date of this rule, the manufacturer's recommendation, and a survey of operators, which indicate that this schedule can be reasonably accommodated within existing inspection intervals. The manufacturer, the other commenter, requested that Note (2), paragraph (c), of AD 80-06-04 be revised to correct the page number for View "G-G" of Service Bulletin 57-125, Revision 4. The FAA concurs and this change has been incorporated in this AD.

The estimated costs associated with this AD are as follows: 150 U.S. registered airplanes are affected which will require approximately 47 manhours per airplane to accomplish the required repetitive inspections. Average labor charge is $40 per manhour. Based on these figures, the inspection cost will be $282,000. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule, with the changes previously noted.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending AD 80-06-04, Amendment 39-3716 (45 FR 17944) dated March 8, 1980, as follows:

A. Revise applicability statement to read:

McDonnell Douglas: Applies to DC-9-10 through -40 and (Military) C-9 series aircraft, certificated in all categories, which correspond to the factory serial numbers listed in McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 4, dated June 21, 1983 (hereinafter referred to as SB 57-125, R4), except those airplanes previously modified per Option I of McDonnell Douglas DC-9 Service Bulletin 57-125, original issue, or subsequent revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Throughout the AD, change "SB 57-125, Revision 2" to read "SB 57-125, R4".

C. Revise 3rd paragraph of AD to read as follows: "To detect cracks and prevent failure of the main landing gear attach fittings, made from 7079-T6 materials identified width basic part (P/Ns) 5911258, 5919289, and 5924841, accomplish the following:"

D. Amend NOTE (1) by deleting "and (c)." and adding "(c), and (d)."

E. Amend NOTE (2) by changing "page 26" to read "page 27."

F. Reidentify paragraphs (d) through (m) as (e) through (n). Add a new paragraph (d) to read as follows:

"(d) Prior to September 1, 1985, inspect the area of the MLG attach fitting under the lower inboard flange ends of the lower auxiliary spar cap end fitting (reference crack location 20) in accordance with SB 57-125, R4. Perform rework as outlined in SB 57-125, R4 (Option II; Phase I, II, or III), and repetitively inspect at intervals specified in SB 57-125 R4, page 15, until terminating action is acccomplished in accordance with paragraph (j), below."

G. Amend reidentified paragraphs (e) through (h) by replacing "(a), (b) or (c)" with "(a), (b), (c), or (d)."

H. Revise reidentified paragraph (j) to read as follows: "(j) Terminating Action: The repetitive requirements of this AD may be discontinued upon replacement of the existing 7079-T6 fitting with a new 7075-T73 fitting in accordance with Option I of SB 57-125, original issue, or subsequent revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

I. Change the FAA office listed in reidentified paragraphs (m) and (n) from "Chief, Aircraft Engineering Division, FAA Western Region" to "Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive, who have not already received these documents from the manufacturer, may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective October 14, 1984.

Secs. 313(a), 314(a), 601 through 610 and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be (1) major under Executive Order 12291 or (2) significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the

criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model DC-9 and C-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

**Wayne J. Barlow,**

*Acting Director Northwest Mountain Region.*

[FR Doc. 84-23899, Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 81-ANE-03; Amdt. 39-4817]**

## Airworthiness Directives; Pratt & Whitney Aircraft, Models JT8D-1, -1A, -7, -7A, -7B, -9, -9A, -11, -15, -15A, -17A, -17R, and -17AR TurboFan Engines; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** In Docket No. 81-ANE-03, Amendment No. 39-4817, appearing in the **Federal Register** of February 29, 1984 at 49 FR 7361, an engine model number to which the Airworthiness Directive is applicable was erroneously omitted from the amendment. This correction amends the Airworthiness Directive to include the omitted engine model number "-7A."

**FOR FURTHER INFORMATION CONTACT:** Mr. Locke Easton, Transport Engine Section, ANE-141, Aircraft Certification Division, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; Telephone (617) 273-7088.

*Correction*

In consideration of the foregoing, Amendment 39-4817 published in the **Federal Register** of February 29, 1984 at 49 FR 7361, is hereby amended by adding engine model "-7A" to the list of engine models to which the Airworthiness Directive applies.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.89)

Issued in Burlington, Massachusetts, on August 30, 1984.

**Robert E. Whittington,**

*Director, New England Region.*

[FR Doc. 84-23904 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 84-ASW-30; Amdt. 39-4904]**

## Airworthiness Directives; Westland Model 30 Series 100 Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Westland Model 30 Series 100 helicopters by individual telegrams. The AD requires an initial and repetitive inspection of the main rotor blade both visually and by eddy current. The AD is needed to prevent failure of the spar which could result in rotor blade failure and subsequent loss of the helicopter.

**DATES:** Effective September 11, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T84-12-51 issued June 5, 1984, which contained this amendment.

Compliance required before next flight after the effective date of this AD (unless already accomplished).

**ADDRESSES:** The applicable service information may be obtained from Westland Helicopters Limited, Yeovil, Somerset, England BA20 2YB.

A copy of the service information is contained in the Rules Docket at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

**FOR FURTHER INFORMATION CONTACT:** Samuel E. Brodie, Helicopter Policy and Procedures Staff, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106, telephone (817) 877-2577.

**SUPPLEMENTARY INFORMATION:** On June 5, 1984, telegraphic AD T84-12-51 was issued and made effective immediately as to all known U.S. owners and operators of certain Westland Model 30 Series 100 helicopters. The AD required an initial and repetitive inspection of the main rotor blade both visually and by eddy current. The AD action was necessary to prevent failure of the main rotor blade spar which could lead to rotor blade failure and subsequent loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest and good cause existed to make the AD effective immediately by individual telegrams issued June 5, 1984, to all known U.S. owners and operators of certain Westland 30 Series 100 helicopters. These conditions still exist and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that the regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to the rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13 is amended by adding the following new airworthiness directive.

**Westland Helicopters Limited:** Applies to Westland Model 30 Series 100 helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent possible hazards in flight associated with cracking of the main rotor blades, accomplish the following:

(a) Before the next flight and thereafter before the first flight of each day, visually inspect the main rotor blades in accordance with Westland Service Bulletin W30-05-23 dated July 16, 1984, or FAA-approved equivalent.

(b) Within 15 hours after the effective date of this AD, unless already accomplished, conduct an eddy current inspection of the main rotor blades and thereafter at intervals not to exceed service since the last inspection in accordance with Westland Service Bulletin W30-05-23, or FAA-approved equivalent.

(c) Remove from service any main rotor blade where cracking is found and replace with a servicable part prior to next flight.

(d) An equivalent method of compliance with the AD may be used when approved by

the Manager, Brussels Aircraft Certification Office, Federal Aviation Administration, c/o American Embassy, APO New York 09667.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89)

This amendment becomes effective September 11, 1984, as to all persons except those persons to whom it was made immediately effective by telegraphic AD T84-12-51, issued June 5, 1984, which contained this amendment.

Issued in Fort Worth, Texas, on August 23, 1984.

C.R. Melugin, Jr.,

*Director, Southwest Region.*

[FR Doc. 84-23905 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 84-NM-12-AD; Amdt. 39-4912]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the front spar pressure bulkhead chord for cracks. This action is prompted by reports of numerous cracks on five airplanes. An undetected crack could result in loss of cabin pressurization and extensive structural damage.

**DATE:** Effective October 15, 1984.

**ADDRESSES:** The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Schrader, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and repair of cracks in the structure was published in the **Federal Register** on April 2, 1984 (49 FR 13055). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. A single comment was received from the Air Transport Association of America (ATA), on behalf of several operators, and requested that aircraft modified to earlier approved versions of Service Bulletin 747-53-2064 should fall into the category of operators who accomplish paragraph B. of the amendment. The FAA concurs, and paragraphs A. and B. of the AD have been revised accordingly.

It is estimated that 102 airplanes of U.S. operators will be affected by this AD, that it will take approximately 84 manhours per airplane to accomplish the required inspections, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $343,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Boeing Model 747 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 747-53-2064, Revision 4, or later FAA approved revisions.

To prevent failure of the front spar pressure bulkhead chord, accomplish the following unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2064, dated July 25, 1972, or later FAA approved revisions, within the next 1,000 landings after the effective date of this AD or prior to the accummulation of 10,000 landings, whichever occurs later, and thereafter at intervals not to exceed 7,000 landings, high frequency eddy current (HFEC) inspect the chord for cracks between stringers S-37 and S-39 at the chord radius, heel and flanges adjacent to the fastener holes identified for inspection in Service Bulletin 747-53-2064, Revision 4, or later FAA approved revisions. If cracks are found in the pressure bulkhead chord, accomplish the repair and modification in accordance with the service bulletin before further flight. Repair of cracks along the chord radius under five inches in length, or across a chord flange that have not severed the chord flange may be deferred 1,000 landings by stop drilling and reinspecting for crack progression every 200 landings using high frequency eddy current. If crack progression is found, repair in accordance with the service bulletin prior to further flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747-53-2064, dated July 25, 1972, or later FAA approved revisions, within the next 1000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 10,000 landings, high frequency eddy current (HFEC) inspect for cracks in the front spar pressure bulkhead lower chord heel from stringers S-37 to S-39, and ultrasonically inspect for cracks in the fuselage skin originating at the indicated fastener holes beneath the forward drag splice fitting flanges, in accordance with the service bulletin. If any cracks are found, repair in accordance with Service Bulletin 747-53-2064, Revision 4, or later FAA approved revisions, before further flight. Inspections are to continue after repair.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with Section 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This amendment becomes effective October 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant

under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on August 31, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23896 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 82-NM-73-AD; Amdt. 39-4911]**

## Airworthiness Directives; Fokker VFW B.V. F27 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Fokker VFW B.V. F27 airplanes that requires new airspeed limitation placards, Airplane Flight Manual (AFM) changes, and a maximum overspeed aural warning device modification. These changes are necessary to prevent potential overloading of the wing structure.

**DATE:** Effective October 15, 1984.

**ADDRESS:** The applicable service information may be obtained from Manager of Service Department, Fokker Aircraft, 2361 Jefferson Davis Highway, Arlington, Virginia 22202, or may also be examined at the Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Anderson, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** The Netherlands Civil Aviation Authority (RLD) has, in accordance with existing provisions of a bilateral agreement, notified the FAA that in order to avoid potential wing structural failure, the maximum operating speed ($V_{MO}$) on Fokker Model F27 airplanes must be reduced from 223 knots I.A.S. to 204 knots I.A.S. when the airplane's maximum certificated takeoff weight is above 41,000 pounds and the airplane is fitted with pylon tanks.

While the RLD requires only an airspeed reduction when weight is above 41,000 pounds, in accordance with Fokker Service Bulletin No. 11/3, the FAA has determined that this condition also requires changes to the airspeed indicators and overspeed aural warning devices.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring accomplishment of the previously mentioned modifications was published in the **Federal Register** on December 9, 1983 (48 FR 55135). The comment period closed on January 29, 1984. Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

No U.S. registered airplane will be affected by this AD at this time. Other airplanes of the specified series will be affected only if they are later entered on on U.S. Register or airplanes on the U.S. Register are fitted with pylon tanks. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act will be affected.

Therefore, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Fokker VFW B.V.:** Applies to all Model F27 Series airplanes, serial numbers 10102 to 10611, inclusive, that are equipped with pylon tanks and the maximum certificated takeoff weight is above 41,000 pounds, certificated in all categories. Compliance is required as indicated, unless already accomplished. To prevent wing structural failure, accomplish one of the following (A, B, or C):

A. Within the next 100 hours time in service after the effective date of this airworthiness directive (AD):

1. Remove the existing airspeed limitation placards and install new placards in accordance with paragraph 2.A and 2.B of the Accomplishment Instructions of Fokker Service Bulletin No. 11/3 dated October 1, 1981.

2. Incorporate changes to the FAA approved Airplane Flight Manual in accordance with paragraphs 1.C and 3 of Fokker Service Bulletin No. 11/3 dated October 1, 1981.

3. Modify the airspeed indicators and overspeed aural warning system to provide a switchable maximum operating speed ($V_{MO}$) that allows selecting a ($V_{MO}$) of 204 knots I.A.S. for operation when the maximum takeoff weight exceeds 41,000 pounds, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Within the next 100 hours time in service after the effective date of this AD, modify as follows:

1. Revise the redline marking of the airspeed indicator or replace the airspeed indicator to reflect the new maximum airspeed limitation of 204 knots I.A.S.

2. Post a placard on the left and right hand instrument panel to read as follows: "MAXIMUM AIRSPEED, 204 KIAS."

3. Adjust the overspeed aural warning device or install a new device so as to comply with the new maximum airspeed limitation; i.e., 204 knots I.A.S., within the tolerances specified by FAR 25.1303(c)(1).

C. Apply for and obtain a supplement to the Airplane Flight Manual which will provide for an operating limitation of 41,000 pounds takeoff weight. Applications may be made to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

This amendment becomes effective October 15, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, F27 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the regulatory docket. A copy may be obtained

by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on August 31, 1984.

Wayne J. Barlow,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23895 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 39

**[Docket No. 84-NM-11-AD; Amdt. 39-4905]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the body station 1241 bulkhead splice strap and forging for cracks. Numerous cracks have been reported. An undetected crack may result in cracking of the station 1241 bulkhead frame forging, which could result in loss of cabin pressure.

**EFFECTIVE DATE:** October 8, 1984.

**ADDRESSES:** The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Schrader, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and subsequent repair of cracks in the structure was published in the Federal Register on April 2, 1984 (49 FR 13057). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. No adverse comments were received.

It is estimated that 142 airplanes of U.S. registry will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the inspection and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $568,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Boeing Model 747 series airplanes, certificated in all categories listed in Boeing Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions. To prevent failure of the body station (B.S.) 1241 bulkhead splice strap, accomplish the following unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2219, dated February 19, 1982, or later FAA approved revisions, perform the following inspections in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions:

(1) Perform an eddy current inspection for cracks in the B.S. 1241 bulkhead frame splice strap and other structure common to the aft large bolt hole in accordance with the Service Bulletin instructions within the next 1000 landings (1500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR), whichever occurs later.

(2) If no cracks are found at the aft large bolt hole common to the longeron fitting identified in the Service Bulletin, eddy current inspect thereafter at intervals not to exceed 7000 landings (10,500 landings for Model 747-100SR).

(3) If a crack is found in the bulkhead splice strap at the aft large bolt hole, perform an eddy current inspection for cracks in the bulkhead frame splice strap and frame forging and other structure common to the adjacent forward hole in accordance with the Service Bulletin instructions.

(4) If no cracks are found in the forward hole, or if cracks are found only in the bulkhead splice strap, reinspect with an eddy current procedure the bulkhead splice strap and frame forging for cracks at the forward hole at intervals not to exceed 3000 landings (4500 landings for Model 747-100SR).

(5) If cracks are found at the forward hole in the bulkhead frame forging, repair in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions, prior to next flight. Inspections are to continue after repairs.

B. For airplanes that have been modified in accordance with Service Bulletin 747-53-2219, dated February 19, 1982, or later FAA approved revisions, within the next 1000 landings (1500 landings for Model 747-100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747-100SR) after the modification, whichever occurs later, and thereafter at intervals not to exceed 10,000 landings (15,000 landings for Model 747-100SR), perform the following inspections in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revisions:

(1) Perform an ultrasonic inspection for bulkhead frame forging corner cracks at the forward fastener hole.

(2) Perform an ultrasonic inspection for bulkhead splice strap edge cracks extending through the aft hole.

(3) Perform a close visual inspection for fastener hole cracks in the external splice plate and the forward and aft internal splice straps.

If cracks are found, repair in accordance with Service Bulletin 747-53-2219, Revision 1, or later FAA approved revision, prior to further flight.

Inspections are to continue after repair.

C. Alternate means of compliance with the AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This Amendment becomes effective October 8, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule

will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 24, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23968 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 84-NM-13-AD; Amdt. 39-4906]**

## Airworthiness Directives; Boeing Model 747 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes, which requires inspection and repair, as necessary, of the body and canted bulkhead structure for cracks at the nose gear wheel well forward corners. This action is prompted by reports from five operators that twelve cracks were found on nine airplanes. This action is necessary because an undetected crack may result in sudden loss of cabin pressurization and extensive structural damage.

**EFFECTIVE DATE:** October 8, 1984.

**ADDRESSES:** The applicable service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Owen Schrader, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and subsequent repair of cracks in the structure was published in the **Federal Register** on April 2, 1984 (49 FR 13054). The comment period for the proposal closed on May 21, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to all comments received. Comments were received from one operator and the Air Transport Association of America (ATA).

The ATA requested, on behalf of its operators, that aircraft modified to earlier approved versions of Boeing Service Bulletin 747-53-2112 should fall into the category of operators who accomplish paragraph B. of the amendment. The FAA concurs, and paragraphs A. and B. of the AD have been revised accordingly.

The other commenter suggested that the Service Bulletin require stop drilling of the skin cracks. The FAA does not agree. In this case, stop drilling the skin crack would be ineffective and impractical because of the stack-up of skin, doubler, and chord.

It is estimated that 94 airplanes of U.S. operators will be affected by this AD, that it will take approximately 12 manhours per airplane to accomplish the required inspection and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD is estimated to be $45,000. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the proposed rule with the changes noted.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Boeing Model 747 series airplanes, certificated in all categories listed in Boeing Service Bulletin 747-53-2112, Revision 3, or later FAA approved revisions. To prevent failure of the body skin and the canted pressure bulkhead structure accomplish the following, unless already accomplished:

A. For airplanes that have not been modified in accordance with Service Bulletin 747-53-2112, Revision 1, or later FAA approved revisions:

(1) Within the next 250 landings for Group I airplanes and 500 landings for Group II airplanes after the effective date of this airworthiness directive (AD), or prior to the accumulation of 4,000 landings, whichever occurs later; and thereafter at intervals not to exceed 1000 landings for Group I airplanes and 2000 landings for Group II airplanes, visually inspect the nose gear wheel well lower forward corners exterior and interior area for cracks in accordance with the Service Bulletin 747-53-2112, Revision 3, or later FAA approved revision. Additionally, perform a high frequency eddy current (HFEC) inspection of the chord and doubler for cracks at the two forward hinge fairing attach bolt locations identified for inspection in Service Bulletin 747-53-2112, Revision 3, or later FAA approved revisions.

(2) For Group I airplanes, if a crack is visible only from outside the airplane and has not progressed into the vertical leg of the nose wheel well forward bulkhead lower chord and does not extend forward of the first row of skin fasteners, repair may be deferred for 500 landings with inspection at 100 landing intervals. If the crack exceeds the above limits, repair in accordance with Service Bulletin 747-53-2112, Revision 3, or later FAA approved revisions, prior to next pressurized flight. Inspections are to continue after repair.

(3) If cracks are found on Group II airplanes, repair in accordance with Service Bulletin 747-53-2112, Revision 3, or later FAA approved revisions, prior to next pressurized flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747-53-2112, Revision 1, or later FAA approved revisions, inspect the nose gear wheel well lower forward corners at the times and using the methods specified in Table I, below. Reinspect at intervals not to exceed those specified in Table I. If cracks are found, repair prior to further flight in accordance with Service Bulletin 747-53-2112, Revision 3, or later FAA approved revisions. Inspections are to continue after repair.

C. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

TABLE I—NOSE GEAR WHEEL WELL LOWER FORWARD CORNER INSPECTION FOR CRACKS (APPLICABLE ONLY FOR AIRPLANES MODIFIED PER BOEING SERVICE BULLETIN 747-53-2112 REVISION 1, OR LATEST REVISION)

| Airplane and inspection | Inspection threshold landings | Repeat inspection interval landings |
|---|---|---|
| **GROUP I** | | |
| **Option I. External Inspection** | | |
| Perform an external visual inspection of the structure adjacent to the left and right forward corners of the nose gear wheel well forward bulkhead in accordance with Service Bulletin 747-53-2112, Rev. 3. | Within 200 landings from effective date of AD, or 1,000 landings after modification, whichever is later. | 100 |
| **Option II. Internal Inspection** | | |
| Perform an internal visual inspection of the nose gear wheel well lower forward corner structure in accordance with Service Bulletin 747-53-2112, Rev. 3. | Within 500 landings from effective date of AD, or 1,000 landings after modification, whichever is later. | 1,500 |
| **GROUP II** | | |
| Perform a low frequency eddy current inspection in the underskin doubler at the nose gear wheel well lower forward corners in accordance with Service Bulletin 747-53-212, Rev. 3. | Within 500 landings from effective date of AD, or 6,000 landings after modification, whichever is later. | 2,000 |

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This Amendment becomes effective October 8, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 24, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23969 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

## 14 CFR Part 71

**[Airspace Docket No. 84-ASO-17]**

## Alteration of Control Zone, Ponce, PR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment alters the Ponce, Puerto Rico, control zone by revising the geographical coordinates of Mercedita Airport and realigning and reducing the size of the control zone arrival extension. The coordinates of the airport are improperly listed and this action will correct the deficiency. The instrument approach procedure serving the airport has been revised which requires the realignment and reduction in the size of the arrival extension.

**DATES:** Effective 0901 GMT, November 22, 1984. Comments must be received on or before October 10, 1984.

**ADDRESSES:** Send comments on the rule in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments on the Rule

Although this action is in the form of a final rule, which involves revising the coordinates of Mercedita Airport as well as realigning and reducing the size of a control zone arrival extension, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

### The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to alter the Ponce control zone so that the coordinates of Mercedita Airport are properly listed and to reduce the size of the arrival extension so that only that airspace required for aeronautical activities is designated as controlled airspace. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984. Under the circumstances presented, the FAA concludes that there is a need to alter the control zone by revising geographical coordinates and realigning and reducing the size of the arrival extension. The changes are so minor and nonsubstantive, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

### List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zones.

### Adoption of the Amendment

### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Ponce, Puerto Rico, control zone under § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, November 22, 1984, as follows:

**Ponce, PR—[Revised]**

Within a 5-mile radius of Mercedita Airport (Lat. 18°00'35" N., Long. 66°33'41" W.); within 3 miles each side of Ponce VOR/DME 120° radial, extending from the 5-mile radius zone to 8.5 miles east of the VOR/DME. This control zone is effective during the specific days and times established in advance by a Notice of Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

*Acting Director, Southern Region.*

[FR Doc. 84-23971 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 71

**[Airspace Docket No. 84-ASO-14]**

## Alteration of Transition Area, Columbia, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment increases the size of the Columbia, South Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Owens Field Airport. This action lowers the base of the additional controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Columbia Airport Surveillance Radar (ASR), has been developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

**EFFECTIVE DATE:** 0901 GMT, October 25, 1984.

**FOR FURTHER INFORMATION CONTACT:** Walter H. Wulff, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, July 6, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Columbia, South Carolina, transition area. This action will provide additional controlled airspace for aircraft executing a new instrument approach procedure to Owens Field Airport (49 FR 27772). The operating status of the airport is changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. All comments received were favorable. This amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in FAA Order 7400.6 dated January 3, 1984.

### The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Columbia, South Carolina, transition area to accommodate IFR aeronautical operations in the vicinity of Owens Field Airport.

### List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition areas.

### Adoption of the Amendment

### PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Columbia, South Carolina, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 GMT, October 25, 1984, as follows:

**Columbia, SC—[Amended]**

By adding the following words to the end of the present text: ". . .; within a 6.5-mile radius of Owens Field Airport (Lat 33°58'28" N., Long. 80°59'55" W.). . .".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Exeuctive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

*Acting Director, Southern Region.*

[FR Doc. 84-23970 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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## 14 CFR Part 71

**[Airspace Docket No. 84-ANM-15]**

## Revise Transition Area; Fort Collins, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The amendment revised the description of the Fort Collins, Colorado, Transition Area. The current description makes reference to the Fort Collins-Loveland NDB which has been renamed. This action corrects the description by deleting reference to the NDB and uses latitude and longitude as boundary description.

**EFFECTIVE DATE:** September 11, 1984.

**FOR FURTHER INFORMATION CONTACT:** Art Corwin, Airspace and Procedures Specialist, ANM-532, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2532.

**SUPPLEMENTARY INFORMATION:** The Fort Collins, Colorado, transition area was established to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions or instrument weather conditions. The description of the transition area will require new points of reference for accuracy. The geographical area and associated airspace encompassed by the transition area will remain unchanged.

Since this action involves only editorial changes in the description of the transition area and makes no substantive change, notice and public procedure herein are unnecessary and good cause exists for making the amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 71

Transition areas, Control zones, Aviation safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective 0901 GMT, when published, as follows:

Fort Collins, CO [Revised].

That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 40°41'30"N, longitude 105°13'35"W; to lat. 40°43'31"N, long. 104°52'03"W; to lat. 40°12'01"N, long. 104°47'05"W; to lat. 40°10'00"N, long. 105°08'27"W; thence to point of beginning.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); [49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983)] (Sec. 1169 of the Federal Aviation Regulations and (14 CFR 11.69)))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory elevation as the anticipated impact is so minimal; and for the same reasons, (4) it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Seattle, Washington, September 10, 1984.

Wayne J. Barlow,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23893 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 558

### New Animal Drugs For Use In Animal Feeds; Salinomycin and Bacitracin Methylene Disalicylate

*Correction*

In FR Doc. 84-20656, beginning on page 31280 in the issue of Monday, August 6, 1984, make the following corrections:

On page 31280, column three, in the fourth complete paragraph, line three, insert "347" after the word "Stat" and in the same paragraph, last line, the first word should read "amended".

BILLING CODE 1505-01-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS PAUL F. FOSTER, et al.

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS PAUL F. FOSTER (DD 964), USS KINKAID (DD 965), USS HEWITT (DD 966), and USS OLDENDORF (DD 972) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as destroyers. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** August 9, 1984.

**FOR FURTHER INFORMATION CONTACT:** Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notices that the Secretary of the Navy has certified that USS PAUL F. FOSTER (DD 964), USS KINKAID (DD 965), USS HEWITT (DD 966), and USS OLDENDORF (DD 972) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with their special functions as Navy ships. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

### List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), and Vessels.

### PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

§ 706.2 [Amended]

Table Five of section 706.2 is amended by adding the following Navy ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

TABLE 5

| Vessel | Number | Forward masthead light not required; height above hull. Annex I, sec. 2 (a) (i) (ii), (c), (d) | Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii) | Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3 (a) | After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|---|---|---|---|
| USS PAUL F. FOSTER | DD 964 | | | | | X | X | | 46.4 |

TABLE 5—Continued

| Vessel | Number | Forward masthead light not required; height above hull. Annex I, sec. 2 (a) (i) (ii), (c), (d) | Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii) | Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3 (a) | After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|---|---|---|---|
| USS KINKAID | DD 965 | | | | | | X | X | 46.4 |
| USS HEWITT | DD 966 | | | | | | X | X | 46.4 |
| USS OLDENDORF | DD 972 | | | | | | X | X | 46.4 |

**Authority:** Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

**James F. Goodrich,**

*Acting Secretary of the Navy.*

[FR Doc. 84-23823 Filed 9-10-84; 8:45 am]

**BILLING CODE 3810-AE-M**

## 32 CFR Part 706

## Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; USS WHIDBEY ISLAND

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final Rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS WHIDBEY ISLAND (LSD 41) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**EFFECTIVE DATE:** August 9, 1984.

**FOR FURTHER INFORMATION CONTACT:** Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400. Telephone number: (202) 325-9744.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS WHIDBEY ISLAND (LSD 41) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special function as a Navy ship. The Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

### List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels

Accordingly, 32 CFR Part 706 is amended as follows:

### PART 706—[AMENDED]

**§ 706.2 [Amended]**

Table Five of section 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

TABLE 5

| Vessel | Number | Forward masthead light not required; height above hull. Annex I, sec. 2 (a)(i), (ii), (c), (d) | Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii) | Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f) | Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i) | Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b) | Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a) | After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|---|---|---|---|
| USS WHIDBEY ISLAND. | LSD 41 | | | | | | | X | 65.0 |

**Authority:** Executive Order 11964; 33 U.S.C. 1605.

Dated: August 9, 1984.

**James F. Goodrich,**

*Acting Secretary of the Navy.*

[FR Doc. 84-23822 Filed 9-10-84; 8:45 am]

**BILLING CODE 3810-AE-M**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD13 84-13]**

## Drawbridge Operation Regulations; Navigable Waterways of the United States, Oregon and Washington

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule makes editorial changes and corrects errors and omissions in sections of Final Rule (CGD 82-025) dated March 29, 1984, which affect bridges in the States of Oregon and Washington.

**EFFECTIVE DATE:** This rule becomes effective on September 11, 1984.

**ADDRESS:** Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98714. The comments will be available for inspection and copying in room 3564 at this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442-5864).

**SUPPLEMENTARY INFORMATION:** On April 24, 1984, the Coast Guard published a Notice of Final Rulemaking in the **Federal Register** (49 FR 17487) revising 33 CFR Part 117—Drawbridge Operation Regulations. Errors and omissions in the operating regulations for certain bridges in Oregon and Washington make this rule necessary. A notice of proposed rulemaking was not published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been unnecessary since the regulations only correct errors and omissions found in the final rule published April 24, 1984. Therefore, the Coast Guard has determined that good cause exists under 5 U.S.C. 553(d)(3) to make this rule effective in less than 30 days after publication.

Although these regulations are published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulations are both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **"ADDRESS"** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed. Based upon comments received, the regulations may be changed.

### Description of Changes

Changes and corrections are enumerated as follows:

*§ 117.887.* Changes name to correctly identify the waterway.

*§ 117.891.* Replaced inadvertently deleted portion of text in first sentence.

*§ 117.893.* Deleted erroneously added portion of text restricting on call operation to May 1 through October.

*§ 117.897.* Replaced inadvertently deleted portion of text establishing advance notice for the Burnside and Morrison bridges.

*§ 117.1033.* Deleted and reserved section (section duplicated as § 117.869).

*§ 117.1041.* Corrected closed periods for Spokane Street and First Avenue South bridges to conform with final rule of 5 March 1984. Corrected waterway mile for Burlington Northern railroad bridge.

*§ 117.1045.* Deleted inadvertently added specific sound signals (signals are covered in § 117.15). Replaced inadvertently deleted section covering operation during unusual or emergency periods.

*§ 117.1049.* Corrected name of bridge and closed periods to conform with final rule of 27 December 1983. Deleted indvertently added specific sound signals (signals are covered in § 117.15).

*§ 117.1051.* Deleted inadvertently added specific sound signals (signals are covered in § 117.15).

*§ 117.1054.* Added specific section for Naselle River.

*§ 117.1059.* Deleted inadvertently added specific sound signals for Burlington Northern railroad bridge across Snohomish River, mile 3.5, at Everett, and SR2 highway bridge across Snohomish River, mile 6.9, at Everett (signals are covered in § 117.15). Corrected inadvertently changed sound signals for Burlington Northern railroad bridge across Steamboat Slough near Marysville.

*§ 117.1061.* Corrected waterway name to "City Waterway" instead of "Tacoma Harbor." Corrected contact point for emergency openings.

*§ 117.1063.* Deleted Naselle River (see § 117.1054). Corrected operation of the Burlington Northern railroad bridge across the South Fork Willapa River and the Washington State highway bridge across the North Fork Willapa River to conform with final rules of 22 February 1983 and 6 January 1984 respectively.

### Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Aubrey W. Bogle, project attorney.

### Economic Assessment and Certification

These regulations have no appreciable economic consequences. They merely correct errors and omissions in a previously published final rule. Consequently, these regulations are not a major rule under Executive Order 12291. Furthermore, they have been found to be nonsignificant under the guidelines set out in Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). Accordingly, they do not warrant preparation of an economic evaluation. In accordance with section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 605(b), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The heading for § 117.887 is revised to read as follows:

**§ 117.887 Oregon Slough. (North Portland Harbor)**

* * * * *

2. Section 117.891 is revised to read as follows:

**§ 117.891 Skipanon River.**

The draw of the Burlington Northern railroad bridge, mile 1.9, at Warrenton, shall be maintained in the fully open position, except for the crossing of trains or other railroad equipment, or when maintenance to the drawspan is being performed. When the draw is closed and visibility at the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two prolonged blasts every minute. When the draw is reopened, the drawtender shall sound one prolonged blast followed by one short blast.

3. In § 117.893, paragraph (a) is revised to read as follows:

**§ 117.893 Umpqua River.**

(a) The draw of the US 101 bridge, mile 11.1, at Reedsport, shall open on signal from 8 a.m. to 4 p.m. Monday through Friday. At all other times, the draw shall open on signal if at least four hours notice is given.

* * * * *

4. In § 117.897, the introductory text of (a)(1), (b) and (c) are revised as follows, and paragraphs (d) and (e) are removed.

**§ 117.897 Willamette River.**

(a) * * *

(1) The draws shall open on signal except that from 7 a.m. to 8:30 a.m. and 4 p.m. to 5:30 p.m. except Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of these days under State law, the draws need not be opened for the passage of vessels. On weekdays, Monday through Friday, from 8 a.m. to 4:30 p.m., at least one hour notice shall be given for openings of the Burnside Bridge and Morrison Bridge. At all other times, at least two hours notice shall be given. Notice shall be given by marine radio, telephone, or other means to the drawtender at the Broadway Bridge for vessels bound upstream and to the drawtender at the Hawthorne Bridge for vessels bound downstream. During Rose Festival Week or when the water elevation reaches and remains above +12 feet, the draws will open on signal without advance notice, except during the normal closed periods identified above. Opening signals are as follows:

* * * * *

(b) The draws of the Southern Pacific railroad bridges, mile 84.3, at Salem; mile 119.6, at Albany; and mile 164.3, near Harrisburg, need not open for the passage of vessels. However the draws shall be returned to operable condition within six months after notification by the District Commander to do so.

(c) The draw of the Oregon State highway bridge, mile 132.1, at Corvallis, shall open on signal if at least seven days notice is given. However the draw need not be opened on Saturdays, Sundays, and Federal holidays.

**§ 117.1033 [Removed and reserved]**

5. Section 117.1033 is removed and reserved.

6. In § 117.1041, paragraphs (a) and (b)(1)s are revised to read as follows:

**§ 117.1041 Duwamish Waterway.**

* * * * *

(a) The draws shall open on signal, except that the draws of the Southwest Spokane Street bridge, mile 0.3, and the First Avenue South bridge, mile 2.5, need not be opened for the passage of vessels from 6 a.m. to 9 a.m. and 3:45 p.m. to 6:45 p.m. Monday through Friday, except Federal holidays.

(b) * * *

(1) Burlington Northern railroad bridge, mile 0.4, and Southwest Spokane Street bridge, mile 0.3, one prolonged blast followed quickly by three short blasts.

* * * * *

7. In § 117.1045, paragraph (c) is revised as follows, and paragraphs (d) and (e) are removed.

**§ 117.1045 Hood Canal.**

* * * * *

(c) During unusual or emergency periods, the authorized representative of the owner of or agency controlling the bridge shall open the draw on a demand basis for specified periods of time, normally not exceeding 48 hours, when requested by the Department of the Navy. While on a demand basis, a drawtender shall be in attendance on the bridge with radio communication equipment in operation.

8. In § 117.1049, the introductory text and paragraphs (c) and (d) are revised as follows, and paragraph (e) is removed.

**§ 117.1049 Lake Washington.**

The draw of the Evergreen Point Floating Bridge between Seattle and Bellevue shall operate as follows:

* * * * *

(c) The draw need not be opened from 6 a.m. to 10 a.m. and 2 p.m. to 7 p.m. Monday through Friday, except Federal holidays for any vessel or other watercraft of less than 2,000 gross tons, unless the vessel has in tow a vessel of 2,000 gross tons or over or a vessel with a piledriver that is unable to pass under the fixed spans.

(d) All non-self-propelled vessels, crafts, and rafts navigating this waterway for which opening of any draw is necessary shall be towed by a suitable self-propelled vessel while passing the draw.

9. In § 117.1051, paragraphs (c) and (d) are revised to read as follows:

**§ 117.1051 Lake Washington Ship Canal.**

* * * * *

(c) The draw of the Burlington Northern railroad bridge, mile 0.1, shall open on signal.

(d) The draws of the Ballard (15th Avenue) bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University bridge, mile 4.3, and Montlake bridge, mile 5.2, shall open on signal. However the draws need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified. The draws shall open on signal from 11 p.m. to 7 a.m. if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue bridge.

10. Section 117.1054 is added to read as follows:

**§ 117.1054 Naselle River.**

The draw of the Washington State highway bridge across the Naselle River, mile 2.5 near Naselle, shall open on signal from 8 a.m. to 5 p.m. Monday through Friday, except Federal holidays if at least two hours notice is given, and at all other times if at least eight hours notice is given.

11. In § 17.1059, paragraphs (c) through (h) are revised as follows, and paragraph (i) is removed.

**§ 117.1059 Snohomish River, Steamboat Slough, and Ebey Slough.**

* * * * *

(c) The draws of the twin SR99 highway bridges across the Snohomish River, mile 3.6, at Everett, shall open on signal if at least one hour notice is given. On weekdays Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR99 highway bridge across Ebey Slough at Marysville, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is three prolonged blasts followed by one short blast. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(d) The draw of the SR2 highway bridge across the Snohomish River, mile 6.9, at Everett, shall open on signal if at least four hours notice is given. During freshets, a drawtender shall be in constant attendance and the draw shall open on signal when so ordered by the District Commander.

(e) The draws of the Washington State highway bridge across the Snohomish River, mile 15.0, and the Burlington Northern railroad bridge across the Snohomish River, mile 15.5, both at Snohomish, need not be opened for the passage of vessels.

(f) The draw of the Burlington Northern railroad bridge across

Steamboat Slough, mile 1.0, near Marysville, shall open on signal if at least four hours notice is given. The opening signal is one prolonged blast followed by one short blast and one prolonged blast.

(g) The draws of the twin SR99 highway bridges across Steamboat Slough, miles 1.1 and 1.2 near Marysville, shall open on signal if at least one hour notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other means to the drawtender at the SR99 highway bridge across Ebey Slough, at Marysville, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is two prolonged blasts followed by one short blast. One signal opens both draws. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

(h) The draws of the SR99 highway bridge across Ebey Slough, mile 1.6, at Marysville, shall open on signal if at least one hours notice is given. On weekdays, Monday through Friday, notice for openings shall be given by marine radio, telephone, or other to the drawtender at this bridge, and at all other times to the drawtender at the SR99 bridges across the Snohomish River at Everett. The opening signal is three prolonged blasts followed by one short blast. During freshets, a drawtender shall be in constant attendance and the draws shall open on signal when so ordered by the District Commander.

12. In § 117.1061, paragraphs (b) through (d) are revised to read as follows:

**§ 117.1061 Tacoma Harbor.**

* * * * *

(b) The draw of the South 11th Street bridge across City Waterway, mile 0.6, at Tacoma, shall open on signal if at least two hours notice is given. However the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

(c) The draw of the East 11th Street bridge across Blair Waterway, at Tacoma, shall open on signal if at least two hours notice is given. However the draw need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

(d) The draws of the East 11th Street bridge across Hylebos Waterway, at Tacoma, shall open on signal if at least two hours notice is given. However the draws need not be opened from 6:30 a.m. to 8:30 a.m. and 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 gross tons, unless the vessels have in tow a vessel 1,000 gross tons or over, or unless the opening of the draw is required for the pickup of a vessel of 1,000 gross tons or over for towing. In emergencies, openings shall be made as soon as possible upon notification to the Washington State Department of Transportation.

13. Section 117.1063 is revised to read as follows:

**§ 117.1063 Willapa River.**

(a) The draw of the US101 highway bridge across the North Fork Willapa River, mile 7.8, at Raymond need not be opened for the passage of vessels. However the draw shall be returned to an operable condition within six months after notification by the District Commander to do so.

(b) The draw of the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, at Raymond, shall open on signal if at least 24 hours notice is given.

(33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g)(3))

Dated: August 24, 1984.

**H.W. Parker,**

*Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.*

[FR Doc. 84-23848 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-14-M

## VETERANS ADMINISTRATION

## 38 CFR Part 21

## Veterans Education; Recovery of Overpayments

**AGENCY:** Veterans Administration.

**ACTION:** Final regulation.

**SUMMARY:** Educational institutions may be held liable under certain circumstances for overpayments of educational assistance allowance made to veterans and eligible persons. If an educational institution pays an amount for which it has been held liable and the money later is collected from veterans and eligible persons, the money is refunded to the educational institution. This regulation will better inform educational institutions of the effect the VA's (Veterans Administration's) recent policy of charging interest on veterans' education debts will have upon any refunds which may be due educational institutions.

**EFFECTIVE DATE:** August 20, 1984.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Ave., NW, Washington, D.C. 20420 (202-389-2092).

**SUPPLEMENTARY INFORMATION:** On pages 3883 and 3884 of the **Federal Register** of January 31, 1984, there was published a notice of intent to amend Part 21 in order to state the effect charging interest on veterans' education debts will have upon any refunds which may be due educational institutions.

Interested people were given 30 days in which to submit comments, suggestions or objections. The VA received four letters containing several suggestions. Two were written by educational organizations; one was from an educational institution; one was from a community college district.

One writer requested that a standard cost formula be developed and published for the various items for which the VA may retain funds to offset costs. She also suggested that the method of computing interest costs be published. The VA has not adopted these suggestions, because this already has been done.

A discussion of charging interest on debts owed the VA, including education debts, appears in § 1.919. The items which the VA may use in computing administrative costs appear in § 1.919(g). Computation of interest costs by the VA appears in § 1.919(c). It is not necessary to repeat this information in other parts of the Code of Federal Regulations.

One person stated that she did not believe that the regulation is consistent with 38 U.S.C. 1785. She stated that any overpayment which a veteran repays should be refunded to the school if the school has been held liable for the overpayment and has made payment to

the VA. Another writer stated that any interest collected should be given to the school.

The VA is certain that this regulation complies with the law. Section 1785, Title 38, United States Code, when taken in context, indicates that educational institutions should be repaid when overpayments are collected from veterans and eligible persons. Educational institutions are never held liable for the interest on a veteran's or eligible person's debt. They may be held liable only for the principal. Hence, they should be paid only when the veteran or eligible person begins to repay the principal.

The Code of Federal Regulations (4 CFR 102.12) requires Federal agencies to apply the money recovered from debtors first toward interest and administrative costs and then toward the principal. Consequently, the first monies collected from veterans and eligible persons should not be refunded to educational institutions, but must be applied toward interest and administrative costs.

One writer discussed issues which, while related to school liability, are not part of the regulation being amended. The agency will consider these issues separately.

The writer also suggested that educational institutions be compensated for the administrative costs they incur while waiting to be paid by the VA. The VA is unable to accept this suggestion.

A provision of law (38 U.S.C. 3115) authorizes the charging of administrative costs of collection on debts owed the United States. There is no provision of law which would allow the VA to make payments to educational institutions to cover their administrative costs while waiting to be repaid. Legislation would have to be enacted before the suggestion could be adopted.

One writer stated that this regulation would shift the emphasis on payment of debts from the veteran to the educational institution. He thought that this was unfair.

This regulatory change is not intended to shift the emphasis on repayment of debts. The VA intends to continue to pursue vigorously the collection of debts from veterans and eligible people.

One writer objected to the longstanding provision that provides for repayment to an educational institution when the total amount collected on principal from veterans at the educational institution exceeds the amount paid by the educational institution as a result of being held liable for the overpayments. Instead the writer suggested that as soon as any part of the principal of an overpayment is recovered from a veteran, that money should be refunded to the school.

If all educational institutions paid all the money for which they are originally held liable, this suggestion would have some merit. However, this is not the case, so this suggestion was not adopted.

For example, an educational institution, which has been held liable for overpayments, often will compromise with the Federal government and pay a smaller amount than the amount for which it originally was held liable. This compromise is not viewed as the sum of a series of small compromises on each of the debts for which the educational institution has been held liable. It is a compromise of the entire amount owed by the educational institution. Consequently, when veterans begin to repay their debts, it is impossible to determine if the repaid amount is part of the payment made by the educational institution or if it is part of the educational institution's liability which was eliminated through compromise.

In order to provide an efficient means of dealing with compromises, the VA has decided not to change this provision.

The VA has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, entitled "Federal Regulation." The annual effect on the economy will be less than $100 million. The regulation will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans' Affairs hereby certifies that this regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the VA does not expect, based on past experience, that the economic impact of this regulation will be significant. Since March 8, 1979, the total amount of money refunded to schools under 38 CFR 21.4009 has been $51,232. If court costs, marshal fees and administrative costs had been collected, and if interest had been charged on debts of veterans and eligible persons during this entire period, the additional costs would have amounted to a few thousand dollars.

Furthermore, a majority of the educational institutions which have been found liable for overpayments of educational assistance are not small entities within the meaning of the RFA. This regulation, therefore, should have a total economic impact on all small entities of a few thousand dollars. The VA does not believe that this is significant. Consequently, the regulation will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations, and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: August 20, 1984.

By direction of the Administrator.

Dated: August 20, 1984.

**Everett Alvarez, Jr.,**

*Deputy Administrator.*

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

The Veterans Administration is amending Part 21 as set forth below:

In § 21.4009, paragraph (a)(4) is revised as follows:

**§ 21.4009 Overpayments—waiver or recovery.**

(a) *General.* * * *

(4) If the Veterans Administration recovers any part of the overpayment from the educational institution, it may reimburse the educational institution, if the Veterans Administration subsequently collects the overpayment from a veteran or eligible person. The reimbursement—

(i) Will be made when the total amount collected from the educational institution and from the veterans and eligible persons (less any amount applied toward marshal fees, court costs, administrative cost of collection and interest) exceeds the total amount for which the educational institution is liable, and

(ii) Will be equal to the excess. (38 U.S.C. 1785)

* * * * *

[FR Doc. 84-23957 Filed 9-10-84; 8:45 am]
BILLING CODE 8320-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[OAR-FRL-2622-2]

### Disapproval and Promulgation of State Implementation Plan; Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** With this notice, EPA is finalizing the following actions on the Medford, Oregon, Carbon Monoxide State Implementation Plan (SIP) revision submitted to EPA on October 20, 1982: (1) Disapproving the inspection and maintenance (I/M) program and the attainment demonstration portion of the Plan; (2) approving the SIP elements pertaining to basic transportation needs, conformity and control measures other than I/M; (3) effective immediately upon publication of this notice, imposing a prohibition on construction or modification of major stationary sources of carbon monoxide (CO) located within or impacting the nonattainment area; and (4) revising the Medford CO nonattainment area boundary. EPA has already initiated the Federal Highway funding limitation process in accordance with the terms of the April 10, 1980 joint EPA/Department of Transportation (DOT) policy statement (45 FR 24692). Today's SIP disapproval may also result in limitations on Clean Air Act (CAA) program grant funds and Clean Water Act sewage treatment plant funding for the Jackson County area. An additional notice on these issues is located in another section of today's **Federal Register**. It provides an opportunity for a public hearing and comment prior to actually imposing any of these funding limitations.

**EFFECTIVE DATE:** September 11, 1984.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-82-8), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

State of Oregon, Department of Environmental Quality, Yeon Building, 522 S.W. Fifth, Portland, Oregon 97204

Copy of the State's submittal may be examined at:

The Office of the Federal Register, 1100 L Street, NW. Room 8401, Washington, D.C.

Public Information Reference Unit, EPA Library, 401 M Street, SW., Washington, D.C. 20460

**FOR FURTHER INFORMATION CONTACT:** Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442-7369, FTS 399-7369.

**SUPPLEMENTARY INFORMATION:**

#### I. Plan Review

*A. Disapproval Elements of the SIP*

On February 3, 1983 [48 FR 5131] EPA proposed to approve the Medford Carbon Monoxide (CO) attainment plan which was submitted to EPA on October 20, 1982. That plan called for the implementation of an I/M program in Jackson County in order to attain the standards prior to December 31, 1987. The proposal specified, however, that EPA would approve the I/M plan "only upon the passage of legal authority for the I/M [plan]. If the State fails to provide the needed authority EPA will disapprove the plan." (48 FR 5133). Since that time, the responsible Jackson County officials have abandoned the original schedules and commitments for implementation of an I/M program in Medford. Accordingly, on March 14, 1984 (48 FR 9582) EPA reversed its original proposal and reproposed its intent to disapprove the plan. On March 27, 1984 the residents in Jackson County, Oregon, voted against the establishment of an I/M program. The current CO attainment plan does not provide for attainment of the standards prior to December 31, 1987. According to the requirements of section 172(b)(10) of the Clean Air Act, EPA has no choice but to finalize disapproval of the I/M and attainment demonstration portions of the Medford CO Attainment SIP. Additional background information on today's rulemaking can be found in the March 14, 1984, **Federal Register** [49 FR 9582].

*B. Approvable Elements of the SIP*

EPA is approving the remaining control strategies, excluding the I/M portion, which were contained in the original SIP. The following is a list of control measures that still contain adequate commitments for implementation or continued implementation:

1. Improved public transit;
2. Parking control;
3. Traffic flow improvements;
4. Bicycle program.

The commitment to these measures ensures that the requirements for basic transportation needs are satisfied and that improved mobility will be emphasized. Therefore, EPA is approving the element pertaining to basic transportation needs as well as the four elements listed above.

Conformity of federal actions with the plan will be determined in accordance with the procedures set forth in the SIP. Existing State rules already ensure that federal actions will be reviewed for conformity with the SIP in a manner consistent with the criteria contained in the April 1, 1980 **Federal Register** (45 FR 21590). Procedures for specifically evaluating Department of Transportation plans, programs and projects are included in the SIP produced by Jackson County. As indicated in the CO plan, regardless of the initial conformity finding of the transportation plans and program, individual projects still must comply with all provisions and requirements of the SIP. Specifically this includes the provisions that a project must not cause new or exacerbate existing violations of the standards. Therefore, EPA is also approving the element of the plan regarding conformity of federal actions with the SIP.

#### II. CO Boundary Redesignation

On March 3, 1978 the entire Medford-Ashland Air Quality Maintenance Area was designated nonattainment for CO. However, actual CO nonattainment problems are confined to the Medford CBD. Thus, Jackson County has reduced the nonattainment area boundaries to include that area of Medford described as follows:

> Beginning at the intersection of Crater Lake Highway (Highway 62) south of Biddle Road to the intersection of Fourth Street, west on Fourth Street to Riverside Avenue (Highway 99), south on Riverside Avenue to Tenth Street, west on Tenth Street to the intersection with Oakdale Avenue, north on Oakdale Avenue to the intersection with Fourth Street, east on Fourth Street to Central Avenue, north on Central Avenue to Court Street, north on Court Street to the intersection with Crater Lake Highway (Highway 62) and east on Crater Lake Highway to the point of beginning.

This boundary revision was contained in the October 20, 1982 Medford, Oregon, CO State Implementation Plan, and was proposed for approval by EPA in the February 3, 1983 **Federal Register** (148 FR 51321). EPA is now taking final action to approve this revision.

#### III. Response to Comments

Due to an error in printing the proposed rulemaking notice, the original

30-day comment period was extended an extra 15 days to April 30, 1984. No comments were received.

### IV. Construction Moratorium

Pursuant to the requirements in section 110(a)(2)(I) of the Clean Air Act, a construction moratorium is now in effect in the newly identified nonattainment area described in the previous section (Section V). This moratorium impacts all major stationary sources of carbon monoxide that would be constructed or modified within the nonattainment area. This restriction will be removed when any of the following conditions are met: (a) implementation of an I/M program under approvable regulations begins in Medford, (b) the area is formally redesignated by EPA to attainment for CO or (c) EPA approves a plan that demonstrates attainment by the end of 1987.

### V. Final Action

With this notice EPA is: (1) Disapproving the Medford I/M program and the attainment demonstration portions of the plan; (2) approving the SIP elements contained in the Medford CO attainment plan, which was submitted to EPA on October 20, 1982 pertaining to basic transportation needs, conformity, and control measures other than I/M; (3) imposing, as required by section 110(a)(2)(I) of the Clean Air Act, a prohibition on construction or modification of major stationary sources of CO effective immediately; and (4) revising the CO nonattainment boundary for Medford.

This disapproval may also result in restriction of Federal funding pursuant to sections 176(a) and 316(b) of the Clean Air Act. Under section 176(a), EPA and the Department of Transportation must limit funds for air quality planning and transportation projects in any area where transportation control measures are necessary for attainment and where EPA finds that a state has not submitted, or made reasonable efforts to submit, a plan meeting the requirements of section 172.

Section 316(b) states that the Administrator may restrict grants for sewage treatment works if the State does not have in effect or is not carrying out an approved SIP which accommodates the direct and indirect air quality impacts from the new sewage treatment capacity.

EPA is publishing a separate notice of proposed rulemaking in another section of today's **Federal Register** which provides an opportunity for a public hearing and comment before imposing any of these funding restrictions. For more information on the scope of the restrictions and the procedures EPA will follow, see 45 FR 24692 (April 10, 1980) (air quality planning and transportation grants) and 45 FR 53382 (August 11, 1980) (sewage treatment grants).

Under Executive Order 12291, EPA must assess the economic impact of any proposed or final rule. Under the Regulatory Flexibility Act, 45 U.S.C. 605(b), EPA must assess the impact of proposed or final rules on small entities.

Upon publication of this notice to disapprove the Medford CO SIP, a moratorium on the construction and modification of major stationary sources of carbon monoxide will go into effect in the Medford nonattainment area. EPA has previously tried to quantify the impacts of Clean Air Act rules on the construction and modification of sources, but has been unable to do so because it cannot obtain reliable information on future plans for business growth. Consequently, EPA is making no quantified assessment of the potential impacts of this proposed action.

Additionally, even if this action were to have some impact, the Agency could not modify its action. Under the Clean Air Act the imposition of a construction moratorium is automatic and mandatory whenever the Agency determines that a plan for a nonattainment area fails to meet the requirements of Part D of the Act. Further information, including a statement on the Regulatory Flexibility Act, can be found in the General Preamble to proposed rulemakings published on February 3, 1983 (48 FR 5022).

Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response are available for public inspection at the above listed address.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 1984. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

### List of Subjects

*40 CFR Part 52*

Air pollution control, Carbon monoxide, Intergovernmental relations.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

(Secs. 107(d) and 171 through 173. Clean Air Act, as amended (42 U.S.C. 7407(d), 7410(a), 7501 through 7503, and 7601(a)))

Dated: September 4, 1984.

**Note.**—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of the Federal Register in May 1984.

**William D. Ruckelshaus,**

*Administrator.*

## PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

### Subpart MM—Oregon

1. In § 52.1970 paragraph (c)(66) is added as follows:

**§ 52.1970 Identification of plan.**

* * * * *

(c) * * *

(66) On October 20, 1982, the State of Oregon Department of Environmental Quality submitted a revision to the Medford, Oregon, Carbon Monoxide Attainment Plan which is contained in the Oregon State Implementation Plan. This plan builds upon the plan submitted in June 1979.

2. Section 52.1983 is added as follows:

**§ 52.1983 Medford Carbon Monoxide Attainment Plan.**

(a) *Part D—Approval.* All elements contained in the October 20, 1982 State Implementation Plan revision, except those pertaining to I/M and the attainment demonstration, are hereby approved, including but not limited to the following:

(1) Basic transportation needs,

(2) Conformity procedures, and

(3) Control measures other than inspection and maintenance of vehicles including improved public transit, parking controls traffic flow improvements, and a bicycle program.

(b) *Part D—Disapproval.* The following elements contained in the October 20, 1982 State Implementation Plan revision are hereby disapproved:

(1) The element pertaining to the inspection and maintenance program (Section 4.9.4.2.2), and

(2) The attainment demonstration (Sections 4.9.3.2 and 4.9.4.4).

(c) Because certain elements of the Part D plan are being disapproved, the construction moratorium pursuant to section 110(a)(2)(I) of the Clean Air Act is now in effect. This moratorium impacts all major stationary sources that would be constructed or modified within the nonattainment area or located close enough to the boundary in order to have a significant impact upon the area.

## PART 81—[AMENDED]

Part 81 of Chapter I, Title 40 Code of Federal Regulations is amended as follows:

### Subpart C—Oregon

In § 81.338, the table entitled "Oregon CO" is revised to read as follows:

**§ 81.338 Oregon.**

| Designated area | Does not meet primary standards | Cannot be classified or better than national standards |
|---|---|---|
| Portland-Vancouver AQMA (portion of the Oregon portion). | X | |
| Eugene-Springfield AQMA | X | |
| Medford—an area contained within the central commercial area of the city. | X | |
| City of Salem | X | |
| Remainder of State | | X |

[FR Doc. 84-23924 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

[FCC 84-405]

### Frequency Allocation To Provide for Non-Government Access to the Tracking and Data Relay Satellite System

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission amends Part 2 of its Rules to provide a non-Government allocation in the 2285–2290 MHz band for the space research, space operations and earth exploration-satellite services. This will allow non-Government users in these services to access the NASA Tracking and Data Relay Satellite System.

**EFFECTIVE DATE:** September 11, 1984.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Thomas, Office of Science and Technology, 2025 "M" Street, NW. 20554, (202) 653–8171.

**SUPPLEMENTARY INFORMATION:**

List of Subjects in 47 CFR Part 2

Frequency allocations, Radio.

Order

In the Matter of Amendment of Part 2 of the Commission's Rules providing an allocation in the 2285–2290 MHz band to allow access for non-Government space operations to the Tracking and Data Relay Satellite System.

Adopted: August 27, 1984.

Released: August 30, 1984.

By the Commission.

1. The Tracking and Data Relay Satellite System (TDRSS), which relays data from space research, space operations and earth exploration-satellite systems to earth stations, is owned and operated by the National Aeronautics and Space Administration (NASA). TDRSS operates in the band 2200–2290 MHz, which is currently allocated exclusively for Government use. However, NASA, as a matter of policy, has offered use of TDRSS to non-Government space users (NASA Management Instruction 8410.3). NTIA has approved this non-Government use of the Government band. Therefore, the Commission is making a non-Government allocation in the 2285–2290 MHz band to provide non-Government space operations access to TDRSS. It is only necessary to allocate this one band as TDRSS is a complete system with all of the necessary space-to-earth links. Therefore, all that is needed by the non-Government user is the feeder link to TDRSS. To accomplish this we are adopting a footnote to the Table of Frequency Allocations, § 2.106 of the rules. The footnote has been coordinated with the Government sector through the Interdepartment Radio Advisory Committee. The footnote reads as follows:

US303 In the band 2285–2290 MHz, non-Government space stations in the space research, space operations and earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the Earth's surface from such non-Government stations shall not exceed −144 to −154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 2557.

The appropriate modifications necessary to amend § 2.106 of the Commission's Rules are contained in the Appendix.

2. We find that good cause exists to excuse compliance with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553). This amendment will not affect existing FCC licensees and reflects an NTIA action regarding a Government band, which simply provides for a non-Government allocation in the band. Moreover, we would not expect such a Notice to generate adverse comments. In short, public notice and comment appears unnecessary. Furthermore, because this footnote provides additional opportunity for the non-Government sector and, thus relieves a restriction on the use of spectrum, we find good cause exists for making this action effective immediately.

3. Accordingly, it is ordered, that § 2.106 is amended as set forth in the Appendix. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. These amendments become effective immediately upon publication of this order in the **Federal Register.**

4. Point of contact on this matter is Fred Thomas (202) 653–8171.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

### Appendix

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by adding footnote designator US303 at columns 4 and 5 in the 2200–2290 MHz band and by adding the text of footnote US303 to the list of footnotes following the Table of Frequency Allocations.

**§ 2.106 Table of frequency allocations.**

| United States table | | FCC use designators | |
|---|---|---|---|
| Government Allocation (MHz) | Non-Government Allocation (MHz) | Rule part(s) | Special use frequencies |
| (4) | (5) | (6) | (7) |
| • • • • • | | | |
| 2200–2290 | 2200–2290 | | |
| FIXED | | | |
| MOBILE | | | |
| SPACE RESEARCH | | | |
| (Space-to-Earth) | | | |
| (Space-to-space) | | | |
| US303 G101 | US303 | | |
| • • • • • | | | |

US303 In the band 2285–2290 MHz, non-Government space stations in the space research, space operations and earth exploration-satellite services may be authorized to transmit to the Tracking and Data Relay Satellite System subject to such conditions as may be applied on a case-by-case basis. Such transmissions shall not cause harmful interference to authorized Government stations. The power flux density at the Earth's surface from such non-Government stations shall not exceed −144 to −154 dBW/m²/4 kHz, depending on angle of arrival, in accordance with ITU Radio Regulation 2557.

• • • • •

[FR Doc. 84-23944 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 15

[Gen. Docket No. 82-827; RM-4120; FCC 84-406]

## Amendment of the Commission's Rules to Permit the Operation of a Perimeter Protection System in the Band 40.66 to 40.70 MHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** This document establishes new rules to permit the operation of a new type of buried cable perimeter security system. The proceeding was initiated in response to a petition for rulemaking filed by Senstar Systems Corporation. It will permit the application of this new technology, subject to certain minimum technical and administrative constraints.

**EFFECTIVE DATE:** October 12, 1984.

**FOR FURTHER INFORMATION CONTACT:** Liliane M. Volcy, Office of Science and Technology, Telephone: (202) 653-8247.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Security measures, Radio, Reporting and record keeping requirements.

### Report and Order

In the matter of amendment of Part 15 to permit the operation of a perimeter protection system in the band 40.66 to 40.70 MHz.; Gen Docket No. 82-827, RM-4120.

Adopted: August 8-27-84.
Released: September 5, 1984.

By the Commission.

1. A Notice of Proposed Rule Making in this proceeding was adopted on December 22, 1982 [48 FR 2148, January 18, 1983). Initiated in response to petition for rulemaking filed by Senstar Security Systems Corporation (Senstar), it proposed to amend Part 15 of the Rules to permit the operation of a perimeter protection system at 40.68 MHz ± 20 kHz.

2. Control Data Canada, Ltd. (CDC) and Senstar were the only parties to file comments and reply comments in response to the *Notice*. Senstar supported, with a few minor changes, the proposal as adopted. CDC requested the adoption of additional technical parameters (increased power and frequency of operation) to permit greater flexibility in the design and development of perimeter protection systems. For the reasons discussed below, we are adopting the rules, as proposed in this proceeding, with a few minor changes which take the comments into consideration. We will also be initiating in the near future rulemaking in this proceeding as indicated in paragraph 9 below.

3. A perimeter protection system is a special type of field disturbance, sensor designed to detect unauthorized entry or exit at a secured facility.[1] Expected use of such systems would be at nuclear power plants, penal institutions, weapons and ammunition depots, chemical and explosive manufacturing plants, etc. It is composed of ported or leaky cables buried around the perimeter of a facility, on which a signal generates a surface wave and establishes a radio frequency field. When an intruder penetrates the field, a disturbances is detected by the system. A very desirable feature of surface wave phenomena, as noted by Senstar, is the extremely low radiation level into space. Most of the FR energy is contained around the cables. Two key aspects, target cross-section and cable performance, are involved in designing perimeter protection systems. Target cross-secton refers to the detection of human movement versus the rejection of small animals or objects which requires frequencies above 30 MHz. Cable performance depends on the attenuation and coupling factors which, in order to be cost effective and practical, must use frequencies between 10 and 100 MHz. The design criteria of perimeter protection systems, therefore, justify the need to operate in the VHF region.

4. In the *Notice*, we proposed the following technical specifications for a perimeter protection system: operation limited to the frequency band at 40.68 MHz ± 20 kHz with a field strength not to exceed 50 microvolts/meter measured at a distance of 30 meters from any part of the system; emissions outside the 40.68-40.70 MHz band limited to 5 microvolts/meter at 30 meters; and, a limit on power line conducted emissions of 250 microvolts. Operation is also conditioned on the system not interfering with any authorized radiocommunication operation and accepting any interference that may be received, in accordance with § 15.3 of the Rules. These are essentially the same parameters suggested by Senstar in its petition. Since this band is shared with the government, operation under these specifications was coordinated with, and received the concurrence of, the U.S. Department of Commerce, National Telecommunications and Information Agency (NTIA), which manages U.S. Government use of the radio spectrum.

5. The *Notice* cited the following reasons for the proposal: The rules do not currently provide any operation in the VHF region for field disturbance sensors; and the use of a band allocated to industrial, scientific and medical (ISM) equipment would minimize the potential of interference to radiocommunication services. The 40.66-40.70 band is part of the frequency spectrum designated in the Table of Frequency Allocations under § 2.106 of the Rules for ISM applications. Radiocommunication services operating within this band must accept harmful interference which may be caused by ISM applications.

6. In its comments, CDC described a perimeter protection system, called the Guidar System, that it has developed for use in Canada and other countries. The Guidar System is similar in principle to the Senstar system, but operates under slightly different technical parameters. Specifically, CDC commented on the need to operate on any frequency from 30 to 100 MHz due to differences in design. It contends that, to account for design variations and the growing development of perimeter protection systems, additional frequencies should be allowed. It argues that above 60 MHz, the detection zone is better confined than in the lower VHF region. The new rules, CDC sustains, should reflect the needs of other manufacturers and accommodate different designs such as the Guidar System, which is designed to operate in the frequency regions of 57 to 69 MHz. The firm supports the application of alternate methods to open-ported coaxial cables in designing perimeter systems, such as a two wire line, either open or cased in a high dielectric material, as in a 300 ohm TV twin lead.

7. CDC also argued that the radiated field strength levels for the fundamental and spurious emissions proposed in § 15.309 are unduly restrictive and as a result only accommodate systems similar to the one developed by Senstar. In lieu thereof, CDC believes the Commission should apply the limits developed for Class A computing devices in Subpart J of Part 15 of the rules, specifically § 15.810 for perimeter protection systems.[2] The limits for Class

[1] A field disturbance sensor is defined in § 15.4(j) as "a restricted radiation device which establishes a radio frequency field in its vicinity and detects changes in that field resulting from movement of persons or objects within the radio frequency field". An intrusion detector is one example of a device operating under the provisions in Subpart F of Part 15.

[2] Subpart J of Part 15 was adopted in 1979 by the Commission to control the interference potential of computers and similar electronic devices, defined as computing devices. Section 15.810 of these rules specifies the radiated limit on emissons from

Continued

A computing devices are 30, 50 and 70 microvolts per meter measured at a distance of 30 meters from the device for the frequency ranges 30–88 MHZ, 88–216 MHz and 216 tro 1000 MHz, respectively. While these limits are slightly more liberal (4.5 dB) than the proposed limit for the fundamental frequency of a perimeter protection system, they are considerably more severe than the proposed 5 microvolt per meter limit for out-of-band emissions. The more liberal limits of § 15.810 would permit CDC to operate their Guidar System on any number of frequencies and at the same time not restrict the bandwidth of the system.

8. In its reply comments, Senstar opposed CDC's proposed changes on the grounds that a relaxation of the technical standards would increase the interference potential of such systems to VHF TV reception. Operation on the same frequencies as allocated to VHF television broadcasting, (54–72 MHz), according to Senstar, has a greater interference potential than operation on frequencies allocated for industrial purposes.[3] The firm also opposed any delay in this proceeding in order to allow interested parties an opportunity to comment on the expanded frequency and emission requirements proposed by CDC. Senstar claimed that to delay this proceeding would cause additional costs and delay in the marketing of this new technology.[4] CDC, on the other hand, argues that the limits in § 15.810 are already considered acceptable by the Commission of protecting VHF television broadcasting and to adopt more severe limits is unjustified. It recognized, however, that interested parties have not had an opportunity to comment on its suggested changes and therefore asks the Commission to immediately institute a further notice in this proceeding, if it is considered necessary.

9. We agree, in part, with Senstar. Interested parties should have an opportunity to comment on CDC's proposal. Also, while we believe that CDC's comments and proposals may have merit, additional testing and comments from interested and affected parties are needed to complete our evaluation of perimeter protection systems operating in the VHF spectrum. We are therefore adopting the rules as proposed in this proceeding with the exception of a few changes concerning the testing and administrative procedures, as discussed below. We will also initiate a Further Notice of Proposed Rule Making in this proceeding.

10. In the *Notice*, we requested comments on the suitability of using FCC measurement procedure, MP–1, as a guideline for testing a perimeter protection system.[5] MP–1 was developed to evaluate emanation levels from low power remote control and security devices and associated receivers, such as garage door openers. It specifies the use of an open field standard test site for measuring radiated emissions. CDC and Senstar both filed comments expressing a basic concern about the adaptability of MP–1 to buried coaxial cable systems.

11. The commenters state that they do not believe that any single test can adequately verify that a leaky coaxial cable motion detection system could comply with the Commission's regulations in all installations. Because of a number of complex technical considerations, the radiated fields produced by a specific type of cable are primarily location dependent and, to a minor degree, also equipment dependent. According to both firms, actual field measurements of typical sites are therefore important.

12. CDC also expressed a concern about measuring cables lying on the surface or above ground. Due to the additional production of mode of propagation caused by the interface between two dielectrics (air and soil), small changes in the position of the transmitting cable over the ground can cause significant changes in the coupling of energy out of it. Since the sensor is not designed to be sold with cables lying on the ground, CDC argues that this anomalous behavior should not be introduced in the testing procedure. The same applies to air mounted cables, the firm said. CDC also requests that the Commission not tie the measurement procedure for air mounted cables to any particular length of cable, for fear of biasing the results in favor of one operating frequency over another.

13. In making radiated measurements on a perimeter protection system, Senstar contends that it is necessary to take numerous measurements at a distance of 30 meters from the transmitting cable to determine an accurate measurement of the field strength. This, the commentator states, can be a very time consuming task particularly if the perimeter is several miles in length. Such testing would be extremely costly and an impractical burden if required at all installations. CDC agrees that measurement at each site would place an undue burden on the manufacturer. CDC proposes that the Commission adopt the following measurement procedure for radiated emissions:

> Each new device which a manufacturer wishes to market must be measured for radiated emissions at each of its first three sites. If these emissions fall within the allowed limits, the device can be marketed without further testing. (CDC comments, page 20.)

Senstar suggests a minimum of four installation sites, with both high-loss and low-loss mediums and various fence structures, should be measured to determine compliance of a different type of system.

14. We agree that it is impractical and perhaps unduly burdensome for the manufacturer to measure each installation. We also agree with the commenters that MP–1 is unsuitable for measuring radiated emissions from a perimeter protection system, since the procedure was primarily intended to measure radiated emissions on a standard test site from a low power communication device (e.g. garage door transmitter). The reason for proposing MP–1 is that there are parts of the procedure which are applicable in the general sense to all radiated emission measurements. For example, the specifications for the instrumentation and power line measurements may be used for perimeter protection systems. It was not our intent that these systems be measured at a standard test site in the same manner as a low power walkie-talkie.

15. In view of these comments, the test procedures have been revised somewhat in accordance with the suggestions of the commenters. Measurements will be made initially at each installation

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computing devices designed to operate in a commercial or industrial environment. The development of the limits in this section is based on protecting television broadcasting and other authorized radio services at a distance of 30 meters from the device. See Bulletin OST–62, "Understanding FCC Rules for Computing Devices", for a more complete explanation of these Rules. The Bulletin is available from the FCC Consumer Assistance Office.

[3] The frequency band 40.68 MHz ± 20 kHz is allocated for industrial, scientific and medical (ISM) purposes. Radio communication services operating within this band must accept any harmful interference that may be experienced from the operation of ISM equipment. 47 CFR 2.106 footnote 236.

[4] Senstar and others are currently marketing a perimeter protection system under the terms and conditions of a waiver (Order Granting Waiver, adopted December 22, 1982, released January 6, 1983, FCC 82–856). While the technical standards in the *Order* are the same as proposed in this proceeding, the firm argues that the waiver is unduly restrictive in terms of measurement of every system.

[5] MP–1, entitled "FCC Methods of Measurements for Determining Compliance of Radio Control and Security Alarm Devices and Associated Receivers," is available from the FCC Duplicating Contractor, International Transcription Services, 1919 M Street, NW., Room 248, Washington, D.C. 20554, telephone: (202) 296–7322.

following standard engineering practices in making radiated measurements on in-situ equipment. Once the installation has been tested and shown to comply, the system at that location may be labelled and thus operated without any further delay. After the system has been tested and shown to comply at three locations, the manufacturer may file an application for certification, pursuant to the procedures in Subpart J of Part 2 of the rules. Upon receipt of the grant of certification, no further testing will be required for that type of system, unless there is some change that would warrant further testing.

16. According to Senstar, there are four main potential configurations for a perimeter protection system:

(a) Cables buried in soils ranging from dry sand to heavy wet clay, with or without vegetation, or buried in man-made surfacing materials, such as gravel, concrete, reinforced concrete and asphalt;

(b) Cables laid on the surface of the materials mentioned in (1) above;

(c) Cables mounted on or in walls or rooftops composed of conventional materials;

(d) Cables suspended in air supported by posts or standoff brackets.

The information before us indicates that the radiation characteristics of these systems, and hence their interference potential, depend in part on where the cables are to be located. No information has been submitted about the interference potential of systems operating above ground, such as system configurations (b), (c), and (d), above. We are particularly concerned about this interference potential since there is a possibility that in the future these systems will be operated on a number of different frequencies. Accordingly, we have added a definition to the new rules, which for the present restricts a perimeter protection system to a buried cable system, such as system configuration (a), above. The question about an above ground perimeter protection system will be raised again in a further notice in this proceeding. Any refinements to the test procedure can also be addressed at that time.

17. As mentioned in footnote 4 above, the Commission granted a waiver to Senstar and others to permit the immediate marketing and use of this new technology, subject to certain conditions. According to one of these conditions, the waiver shall terminate 30 days after the effective date of any rules adopted in this proceeding. Since the equipment authorized under such a waiver is complying with essentially the same technical specifications adopted herein, that equipment will be grandfathered and subject to no further requirements, with exception of 47 CFR 15.3 and 15.311.

**Final Regulatory Analysis**

18. Pursuant to 5 U.S.C. 601 et seq. an Initial Regulatory Flexibility Analysis was incorporated in paragraph 11 of the Notice of Proposed Rule Making. In paragraph 13 of this NPRM, written comments on this Analysis were solicited with the same filing deadlines as comments on the rest of the Notice. No comments in response to this request were received.

*A. Need for and Objective of Rule*

The Commission is establishing rules for a perimeter protection system to operate in the 40.66 to 40.70 MHz band. The existing general rule provisions for operation in such a band are considered inadequate by manufacturers.

*B. Summary of Issues Raised in Comments on Initial Analysis*

No comments were received specifically on the Initial Regulatory Flexibility Analysis in the Notice in this proceeding. Since these rules do not impose any new reporting or record keeping requirement, there is no deleterious economic effect on manufacturers of a perimeter protection system (operating in the 40.66 to 40.70 MHz band) whether a small business or large. In fact, since these rules will facilitate continued growth of a new industry, the effects will be beneficial.

*C. Significant Alternatives*

The regulations adopted herein respond to a petition from the field disturbance sensor industry seeking special rule provisions for sensors operating in the 40.66–40.70 MHz band. This action is in line with the petition. No other significant alternatives are apparent.

19. Pursuant to the above and under the authority of sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 15 is amended as set out in the Appendix of this Order.

20. It is further ordered that this amendment shall become effective October 12, 1984. It is also ordered that perimeter protection systems authorized under the terms of the order referenced in footnote 4, above, are hereby grandfathered, subject only to compliance with 47 CFR 15.3 and 15.311.

21. For further information concerning this Order contact Office of Science and Technology, telephone (202) 653–8247.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**Appendix**

**PART 15—[AMENDED]**

**§ 15.4 [Amended]**

A. Section 15.4(j) is amended by designating the current text as paragraph (1) and adding a new paragraph (2) as follows:

(j) *Field disturbance sensor.* (1) * * *

(2) A perimeter protection system is a field disturbance sensor which uses buried leaky cables installed around a facility to detect any unauthorized entry or exit. Its use is limited to commercial and industrial locations away from residential areas.

* * * * *

B. Part 15, Subpart F is amended as follows:

1. Section 15.305 is amended by adding a new paragraph (d) to read as follows:

**§ 15.305 General technical specifications.**

* * * * *

(d) Alternative to paragraph (a) of this section a perimeter protection system may be on a frequency of 40.68 MHz ± 20 kHz subject to the technical and administrative requirements in §§ 15.310 and 15.312 of this part.

2. A new § 15.310 is added to read as follows:

**§ 15.310 Technical requirements for a perimeter protection system.**

(a) A perimeter protection system may operate on a frequency of 40.68 MHz ± 20 kHz. The frequency tolerance of the carrier frequency of the system shall be ±0.01%. This tolerance shall be maintained over the temperature range of −20 °C to + 50 °C at normal supply voltage and for a variation in the primary supply voltage from 85 to 115 of the rated supply voltage at a temperature of 20 °C.

(b) The field strength of the radiated emission on the fundamental carrier frequency from any part of the system shall not exceed 50 microvolts per meter at distance of 30 meters when measured in accordance with the procedure in § 15.324, of this part.

(c) Harmonics and spurious emissions on frequencies outside the band 40.66 to 40.70 MHz from any part of the system shall not exceed 5 microvolts per meter at 30 meters.

(d) For a perimeter protection system designed to be connected to a low voltage public utility power line, the power line conducted emission shall not

exceed 250 microvolts over the frequency range from 450 kHz to 30 MHz, when measured in accordance with the procedure specified in FCC Measurement Procedure MP–4 entitled "FCC Methods of Measurements of Radio Noise Emissions From Computing Devices."

3. The present title and text of § 15.312 is revised to read as follows:

**§ 15.312 Authorization required.**

(a) A field disturbance sensor shall be certificated prior to marketing, pursuant to Subpart B of this part.

(b) Certification for a perimeter protection system may be obtained from the Commission by filing an application for certification in accordance with Subpart B of this part, along with a statement that the system has been tested at three installations and found to comply. Until such time as certification is granted, a given installation of a perimeter protection system will be considered to be in compliance with the requirements of this part if tests at that installation show the system to be in compliance with the technical requirements in § 15.310. The equipment at that installation shall be labelled with the compliance statement described in § 15.314(a). Upon receipt of a grant of certification by the Commission, additional testing of the same or similar type of system or installation is not required.

4. A new § 15.324 is added to read as follows:

**§ 15.324 Measurement requirements for a perimeter protection system.**

The following procedure shall be used to measure radiated emissions from each installation of a perimeter protection system to show compliance with the technical requirements in § 15.310 of this part. An alternative test procedure may be used, provided that it is acceptable to the Commission in advance of the actual testing and that the procedure is detailed in the report of measurements of the system.

(a) The system shall be installed in accordance with the manufacturer's installation procedure and verified that it is operational. If user controls are provided, the maximum RF power setting shall be used.

(b) The measurements of the system shall be made with a spectrum analyzer, radio noise meter, or other appropriate instrument. The 6 dB bandwidth of the instrument shall be not less than 100 kHz over the frequency range of 30 to 1000 MHz. A peak detector circuit shall be used for these measurements.

(c) Measurements of the frequency stability, bandwidth, and RF power output shall be made at the transmitter and each repeater. The fundamental operating frequency, associated harmonics and spurious emissions within 30 dB of the level of the fundamental carrier shall be recorded. For measurement of radiated emissions a calibrated tuned dipole or an appropriate broadband antenna shall be used. The antenna shall be varied in height and rotated for the measurement of horizontally or vertically polarized waves to obtain the maximum radiated emission at each frequency.

(d) A search around the perimeter of the entire system shall be made for emissions at each of the frequencies recorded in paragraph (c) of this section. These measurements should be made at a distance of thirty meters or less from the cable perimeter. A calibrated tuned dipole or an appropriate broadband antenna shall be used for this search.

(e) At two or three locations on the perimeter at which radiated emissions are maximum, measurements shall be taken at closer distances from the cables. In the event that radiated emissions from the system fall below the ambient level before the measuring distance is reached, extrapolation can be done to determine the level at 30 meters. In the event that a metal fence must be crossed in measuring at various distances, the location of such a fence shall be recorded. Where a system encloses a protected area, measurements should only be made on the outside of the perimeter.

[FR Doc. 84–23940 Filed 9–10–84; 8:45 am]
BILLING CODE 6712–01–M

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## 47 CFR Part 73

**[Gen. Docket No. 83–1009]**

## Multiple Ownership of AM, FM, and TV Broadcast Stations; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On August 9, 1984, the Commission published a Report and Order regarding Multiple Ownership of AM, FM, and TV Broadcast Stations (49 FR 31877). The FCC number was inadvertently referred to as 83–440 in the Preamble. This clarifies the FCC number as *84–350.*

**FOR FURTHER INFORMATION CONTACT:** Trevor Potter, Office of General Counsel (202) 632–6990.

William J. Tricarico,

*Secretary, Federal Communications Commission.*

[FR Doc. 84–23945 Filed 9–10–84; 8:45 am]
BILLING CODE 6712–01–M

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## GENERAL SERVICES ADMINISTRATION

## 48 CFR Ch. 5

**[AC–84–5]**

## Payment by Wire Transfer

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Temporary regulation.

**SUMMARY:** This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR) to prescribe a Method of Payment clause for inclusion in contracts established by GSA for use by all agencies. This clause requires contractors to furnish banking information to enable agency paying offices to make payment by wire transfer.

**DATES:** *Effective:* August 31, 1984.

*Expiration:* This Acquisition Circular expires 6 months after issuance.

**FOR FURTHER INFORMATION CONTACT:** Richard Sanders, Office of GSA Acquisition Policy and Regulations, Washington, DC 20405 (202) 523–4740.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Impact

The Director, Office of Management and Budget (OMB), by memorandum dated October 4, 1982, exempted agency procurement regulations from Executive Order 12291. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. All of the information collection requirements contained in the Acquisition Circular stem from Department of Treasury requirements which have been approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### List of Subjects in 48 CFR Part 532 and 552

Government procurement.

**Authority:** 40 U.S.C. 486(c).

In 48 CFR Ch. 5, the following Acquisition Circular is added in its entirety to Appendix C at the end of the chapter.

Dated: August 31, 1984.

**William B. Ferguson,**

*Acting Assistant Administrator for Acquisition Policy.*

**General Services Administration Acquisition Regulation; Acquisition Circular (AC–84–5)**

August 31, 1984.

To: All GSA contracting activities.

Subject: Payment by wire transfer and related clauses.

1. *Purpose.* This Acquisition Circular temporarily amends the General Services Administration Acquisition Regulation (GSAR), 48 CFR Ch. 5 (APD 2800.12), to prescribe a Method of Payment clause for inclusion in GSA contracts used by other agencies, and to make related changes.

2. *Background.*

a. Department of the Treasury Bulletin 83–14, dated February 9, 1983, required Federal agencies to implement ways and means of processing vendor payments by wire transfer. Most agencies are now capable of making payments by this method. However, there are a number of exceptions. In particular, the Department of Defense issues checks through its own disbursing offices, and does not make payments by wire transfer. In short, it is not practicable at this time to contractually require contractors to follow a uniform procedure with respect to the Government's options to make payment by check or wire transfer.

b. The Method of Payment clause in 552.232–73, which was originally prescribed in FPR Temporary Regulation 66, Supplement 1, is designed for use in contracts under which payments will be made only by the contracting agency, and is not appropriate for use in contracts under which orders are placed and payments made by numerous agencies. In developing a clause for inclusion in contracts of the latter type, it was determined that, to the extent practicable, contractors should be advised of known exceptions to the requirement for the submission of bank account information, and that other agencies should waive the submission requirements on a case-by-case basis.

3. *Effective date.* August 31, 1984.

4. *Expiration date.* This Acquisition Circular expires 6 months after issuance unless canceled earlier.

5. *Reference to regulation.* Sections 532.111, 552.232–72, and 552.232–73.

6. *Supplementary information.*

a. A memorandum signed by the Deputy Administrator dated October 31, 1983, subject: Payment by Wire Transfer—Treasury Bulletin 83–14, and FPR Temporary Regulation 66, Supplement 1, indicated that wire transfers by GSA/Treasury would not begin until at least June 1, 1984. Information has now been received from the GSA Office of Finance that the automated interface system between GSA and Treasury will not be operational until November 1, 1984, at the earliest.

b. The Office of Management and Budget (OMB) has assigned OMB Control Number 1510–0050 with respect to the information collection requirements under Treasury Bulletin 83–14. This number effectively supersedes OMB Control Number 3090–0141, which was assigned to GSA in connection with the issuance of FPR Temporary Regulation 66, Supplement 1. Accordingly, this Circular amends the clause shown in 552.232–73 to incorporate the OMB control number assigned to the Treasury Department. Solicitations containing this clause which have been issued or forwarded for printing and distribution need not be amended to reflect this change.

7. *Explanation of changes.*

a. Section 532.111 is revised to amplify the applicability statements, and to prescribe a new Method of Payment clause for use in contracts under which payments are made by GSA and other agencies, as follows:

**532.111 Contract clauses.**

(a) *Discounts for early (prompt) payment.* The contracting officer shall insert one of the clauses referenced below in solicitations and contracts under the conditions indicated, in lieu of the clause at FAR 52.232–8.

(1) The basic clause in 552.232–8(a) is for use in contracts for supplies other than multiple-award schedule contracts.

(2) The clause shown as Alternate I in 552.232–8(a) is for use in solicitations and contracts for nonpersonal services.

(3) The clause in 552.232–8(b) is for use in multiple-award schedule solicitations and resultant contracts. (See 515.605–70.)

(b) *Payment due date.* The contracting officer shall insert one of the clauses in 552.232–70 in solicitations and contracts under the conditions indicated. Additional clauses of a similar nature may be developed for use in situations not covered in 552.232–70.

(c) *Interest on overdue payments.* The contracting officer shall insert one of the clauses in 552.232–71 in all solicitations and contracts which are subject to the interest penalty requirements of the Prompt Payment Act. Applicability statements are included in the preface to the basic clause and each of the alternates.

(d) *Invoice requirements.* (1) The contracting officer shall insert the clause in 552.232–72, modified as appropriate, in all solicitations and contracts for supplies or services which require the submission of invoices as a prerequisite to payment by the Government.

(2) The first five entries shown in paragraph (a) of the clause are prescribed in OMB Circular A–125. Additional items of information or substantiating documentation shall be listed as appropriate. In this connection, all matters required to constitute a "proper invoice" shall be listed in the clause, notwithstanding that the requirement may also be indicated elsewhere in the solicitation/contract, because it is this clause, together with the Payment Due Date clause, which provides a basis for withholding payment (if necessary) without incurring a late payment penalty.

(3) Anything listed in paragraph (b) of the clause is requested for the convenience of the Government, but is not a "proper invoice" requirement. The use of this paragraph is optional.

(e) *Method of payment.* The contracting officer shall insert one of the clauses in 552.232–73 in solicitations and contracts when it is anticipated that payments of $25,000 or more may be made under any of the resultant contracts.

(1) The clause in 552.232–73(a) is for use when payments will be made solely by GSA. However, this clause shall also be used if other agencies are authorized to place orders and make payments under resultant contracts, provided that individual orders placed by such agencies will be for less than $25,000 (e.g., orders limited to $10,000 under indefinite quantity contracts for repairs and alterations).

(2) A clause substantially as shown in 552.232–73(b) shall be used when payments will be made by GSA and/or other agencies.

b. Section 552.232–72(a)(6) is amended as follows to reflect in the body of the clause that after the first five entries in the "proper invoice" portion of the clause, additional entries are to be inserted (if applicable) by the contracting officer.

**552.232–72 Invoice requirements.**

As prescribed in 532.111(d), insert the following clause in solicitations and contracts for supplies or services which require the submission of invoices.

**Invoice Requirements (Aug 1984)**

(a) * * *

(6) [**Note:** Continue listing other information or documentation necessary to effect payment under the contract. When the Method of Payment clause in 552.232–73(b) is used, insert a statement substantially as follows: "Information necessary to enable the Government to make payment by wire transfer shall be furnished in accordance with the Method of Payment clause of this contract."]

(b) * * *

(End of Clause)

c. Section 552.232–73 is amended to change the OMB control number currently shown in the clause, to add a new clause, and to arrange these clauses under paragraphs (a) and (b), respectively, as follows:

**552.232–73 Method of payment.**

(a) As prescribed in 532.111(e)(1), insert the following clause.

**Method of Payment (Aug 1984)**

* * * * *

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number. (OMB Control Number 1510–0050).

(End of Clause)

(b) As prescribed in 532.111(e)(2), insert the following clause.

**Method of Payment (Aug 1984)**

(a) *Payment options.* Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) *Information requirements to accomplish payment by wire transfer.* The Contractor shall include the following information on, or as an attachment to, each invoice showing an amount due of $25,000 or more (exclusive of discounts for early payment), except as provided in paragraph (c) of this clause. (OMB Control Number 1510–0050).

(1) Name, address, and telegraphic abbreviation of the receiving financial institution.

(2) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(3) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(4) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(i) Address and telegraphic abbreviation of the correspondent financial institution.

(ii) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) *Exceptions.* The banking information specified in Paragraph (b) of this clause is not required to be furnished to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information furnished to the Veterans Administration shall be by special arrangement and in accordance with instructions received from that agency. Other agencies or departments thereof may waive the requirements of this clause by a notice on delivery orders, or by other means.

(End of Clause)

**Allan W. Beres,**

*Assistant Administrator for Acquisition Policy.*

[FR Doc. 84–23966 Filed 9–10–84; 8:45 am]

**BILLING CODE 6820–61–M**

# Proposed Rules

Federal Register
Vol. 49, No. 177
Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 84-NM-66-AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) that would require replacement of the existing ram air turbine (RAT) rotary actuator electric motor with an improved motor incorporating additional exterior sealing and breather hole modifications. During testing it was fund that moisture could accumulate in the motor and freeze. This kept the RAT from deploying. This action is necessary to ensure the RAT will deploy if needed.

**DATES:** Comments must be received on or before October 23, 1984. Compliance required within 90 days after the effective date of this AD, unless already accomplished.

**ADDRESSES:** The applicable Service Bulletin may be obtained from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may also be examined at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert C. McCracken, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the rules docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the rules docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84-NM-66-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

During qualification testing of the RAT rotary actuator electric motor to verify satisfactory performance under icing conditions, the motor brake armature did not release and the RAT did not deploy. Investigation revealed moisture had accumulated on the brake rotor and had caused the brake armature to become frozen to the rotor when the motor was exposed to sub-zero temperatures. The RAT is present on the airplane to provide hydraulic power for the flight controls in the event of loss of both engines, and is automatically deployed during engine spin-down. It can also be manually deployed. The RAT is the only source of hydraulic power for primary flight controls in the failure condition. If the RAT cannot be deployed because the deployment motor is frozen, there will be no powered flight controls available if both engines are lost.

Since other Model 767 airplanes are equipped with RAT deployment motors which are subject to freezing, an airworthiness directive is being proposed which would require replacement of the existing motors with a new motor having improved exterior sealing and modified breather holes to prevent moisture from entering the rotor casing and to improve circulation around the motor and armature. The existing motors may be modified with a vendor-supplied kit to update the motor to the acceptable configuration.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD; that it will take approximately 5 manhours per airplane to accomplish the required removal, modification, and installation, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD would be $10,200. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. No small entities within the meaning of the Regulatory Flexibility Act would be affected.

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR Part 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to Boeing Model 767 airplanes noted in the Boeing Service Bulletin listed below. To prevent freezing of the ram air turbine (RAT) actuator motors and ensure deployment of the RAT when required, accomplish the following within 90 days after the effective date of this AD, unless already accomplished:

A. Replace the RAT rotary actuator electric motor P/N S258T711-3 with motor P/N S258T711-4, and operationally test the RAT deployment system in accordance with Boeing Service Bulletin 767-29-17, Revision 2 dated June 29, 1984, or later FAA approved revision. A -3 motor may be modified to a -4 configuration by accomplishing rework in accordance with EEMCO Service Bulletin 5076-29-1, Revision 1, dated June 25, 1984, or later FAA approved revision.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of replacements required by this AD.

All persons affected by this directive who have not already received the above specified service bulletins from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or they may be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), and 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, since few, if any, Model 767 series airplanes are operated by small entities. A regulatory evaluation has been prepared and has been placed in the public docket.

Issued in Seattle, Washington, on August 24, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23967 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 84-NM-83-AD]**

## Airworthiness Directives; Airbus Industrie Model A300 B2 and B4 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD) that would require inspection and repairs, as necessary, of the fuselage longitudinal lap joints and circumferential joints, and of the stringers and doublers for bonding delamination and cracks on certain Airbus Industrie Model A300 B2 and B4 series airplanes. Several cases of bonding delamination in these components have been reported. If this condition is not corrected, it has the potential of leading to rapid decompression of the aircraft.

**DATES:** Comments must be received no later than October 29, 1984.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France, or may also be examined at the Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-83-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### *Discussion*

The French Civil Aviation Authority (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of bonding delamination and corrosion on the fuselage structure of the Airbus Industrie A300 airplane. The DGAC has issued an airworthiness directive which has classified three Airbus Industrie service bulletins pertaining to this subject as mandatory. The problems are as follows:

A. During scheduled maintenance, several aircraft have been found to have bonding delamination of the fuselage longitudinal lap joints and circumferential joints. Laboratory investigations have shown that delamination is caused by bondline corrosion and by surface pretreatment problems. Additional investigations of delamination have indicated the presence of corrosion with a large amount of corrosion products and bulging of skin panels between the rivets. Intergranular cracks around the countersinks have also been detected. If left uncorrected, the damage mentioned above could lead to rapid decompression of the aircraft. Airbus Industrie Service Bulletin A300-53-148 prescribes repetitive inspections and repair, if necessary, of the fuselage structure for bonding delamination.

B. One operator has reported existence of severe corrosion and bonding delamination in the lap joint 31LH between frames 26 and 31. The aircraft concerned had logged approximately 10,400 flight hours and 6,940 flights. The most severely corroded area was about 8 inches in length and showed clear signs of bulging of the outer skin between the two rivet rows. The bulging found was almost 0.08-inch, caused by corrosion products. A specimen from the corroded area was subjected to a detailed laboratory examination. At some time after delamination, moisture had penetrated into the crevice, leading to the formation of corrosion and subsequent loss of aluminum cladding. Thereafter, pitting and intergranular corrosion continued, gradually forming corrosion products, which then caused deformation of the skin panel between the rivet rows. Since the skin panel and doubler are restricted in their movements by the rivets, high flexural stresses occur in the immediate vicinity of the countersinks and finally give rise to crack formation. The laboratory examination showed a number of small cracks around the rivet holes. Airbus Industrie Service Bulletin A300-53-178 prescribes repetitives inspections and repairs, if necessary, of the fuselage structure for corrosion and cracks.

C. Bonding delamination of stringers and doublers during scheduled maintenance was also found. Laboratory investigation showed that bonding separation was caused by local adhesion failures which occur because of problems with the pickling and rinsing treatment of skin panels prior to

bonding. Uncontrolled debonding propagation in these components could lead to a significant reduction in static strength of the fuselage structure, leading to an inability of the structure to withstand limit loads. Airbus Industrie Service Bulletin A300–53–149 prescribes repetitive inspections and repairs, as necessary, of stringers and doublers for bonding delamination.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the actions mentioned above.

It is estimated that 27 U.S. registered airplanes would be affected by this AD, that it would take approximately 550 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $594,000.

For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156, certificated in all categories. To prevent rapid decompression of the aircraft, accomplish the following within the time schedules indicated below, unless previously accomplished:

A. Prior to the threshold limits specified in Table 1 of Airbus Industrie Service Bulletin A300–53–148, Revision 5, dated May 10, 1984, or within 6 months after the effective date of this AD, whichever is later, inspect the fuselage longitudinal lap joints and circumferential joints for bonding delamination in accordance with the accomplishment instructions of the service bulletin.

1. If no delamination is detected, repeat these inspections in accordance with the schedule shown in Table 1 of the service bulletin.

2. If delamination is detected in any of the inspections above, perform the actions indicated in Figure 3, Follow-up Action, of the service bulletin.

B. Prior to the threshold limits specified in Figure 1, Inspection Program, of Airbus Industrie Service Bulletin A300–53–178, Revision 3, dated April 9, 1984, or within 6 months after the effective date of this AD, whichever is later, visually inspect for corrosion and cracks, and repair if necessary, the bonded longitudinal lap joints and circumferential joints specified in Figure 1 of the service bulletin, in accordance with the accomplishment instructions of the service bulletin. Repeat the inspections in accordance with the schedule shown in Figure 1 of the service bulletin.

C. Prior to the threshold limits specified in Figure 1, Inspection Frequency, of Airbus Industrie Service Bulletin A300–53–149, Revision 5, dated April 19, 1984, or within 6 months after the effective date of this AD, whichever is later, inspect and repair, if necessary, all bonded stringers between frame 18 and frame 80 and all bonded doublers between frame 1 and frame 80, for bonding delamination in accordance with the accomplishment instructions of the service bulletin. These inspections must be repeated according to the schedule shown in Figure 1 of the service bulletin.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections, repairs, and/or modifications required by this AD.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Airbus Industrie Model A300 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84–23889 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

**14 CFR Part 39**

**[Docket No. 84–NM–96–AD]**

## Airworthiness Directives: Short Brothers Ltd. Model SD3–60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This amendment proposes an airworthiness directive (AD) applicable to certain Short Brothers Ltd. Model SD3–60 series airplanes which would require replacement of the existing pitot type oil cooler air intake scoop with a "D" type scoop. Several instances of icing of the existing scoop have been reported while operating in severe icing conditions. Partial blocking of the scoop by ice results in high oil temperatures which could require shutdown of an engine during flight.

**DATES:** Comments must be received no later than September 29, 1984.

**ADDRESSES:** The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available,

both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–96–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

### Discussion

The Civil Aviation Authority of the United Kingdom (CAA) has classified Short Brothers Ltd. Service Bulletin SD260–71–05 as mandatory. Service experience and evaluation by the manufacturer has shown that the existing pitot type oil cooler air intake scoop fitted to the SD3–60 airplane tends to ice more easily than the "D" type scoop fitted to the SD3–30 airplane. Several reports of high oil temperatures have been reported while operating in severe icing conditions. Investigation revealed that this was caused by ice blocking the oil cooler air intake scoop.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the installation of "D" type oil cooler air intake scoops in place of the existing pitot type scoops.

It is estimated that approximately 10 airplanes of U.S. Registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,400. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**Short Brothers Ltd:** Applies to Model SD3–60 airplanes as listed in Short Brothers Service Bulletin SD360–71–05, dated March 1984, certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent icing of the oil cooler air intake scoop, accomplish the following:

A. Within 60 days after the effective date of this airworthiness directive (AD), install the "D" type oil cooler air intake scoop on both intake cowls in accordance with Short Brothers Ltd. Service Bulletin SD360–71–05, dated March 1984.

B. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Ltd. Model SD3–60 series airplanes are operated by entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84–23890 Filed 9–10–84; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 84–NM–62–AD]**

## Airworthiness Directives; Boeing Model 767–200 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to add a new airworthiness directive (AD) applicable to Boeing Model 767–200 airplanes which requires a fuel tank low temperature limit of −35 °F (−37 °C) and replacement of the fuel boost pumps. There have been reports of fuel boost pumps seizing when exposed to low fuel temperatures in service. This action is necessary to preclude loss of all fuel boost pressure and subsequent potential for multiple engine flameout.

**DATES:** Comments must be received on or before October 1, 1984.

**ADDRESSES:** The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven P. Clark, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431–2964. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM)

by submitting a request to the Federal Aviation Administration Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket No. 84–NM–62–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Background**

There have been 19 reported occurrences of fuel boost pump circuit breaker trips on the Boeing Model 767–200 airplane. The circuit breaker tripping was found to be caused by an electrical overload due to the boost pump seizing when exposed to low temperature fuel. The boost pump seizures were due to differential shrinkage during cooling of the aluminum pump bearing housing and the steel armature shaft. To correct this condition, a new design pump with increased shaft-to-bearing clearance and a modified bearing housing is being made available.

Three Model 767 flights resulted in multiple boost pump seizures. On one flight, all four main pumps seized, resulting in suction feed to both engines. Operation of one pump restored, but the flight continued with one engine on suction feed. Suction feed operation has resulted in engine flameout under some conditions.

Since this condition may exist or develop on other airplanes of this type, a fule tank low temperature limit of −35 °F (−37 °C) is proposed to preclude fuel boost pump seizures in flight. It is further proposed that this fuel temperature limitation may be removed when at least one boost pump in each main fuel tank and at least one boost pump in the center auxiliary fuel tank (if activated) is replaced with improved pumps. This replacement would have to be accomplished within one year after the effective date of the AD. Within two years after the effective date of the AD, both boost pumps in each main fuel tank and both boost pumps in the auxiliary fuel tank (if activated) would have to be replaced with improved pumps.

It is estimated that 52 U.S. registered airplanes would be affected by this AD, that it would take approximately 8 manhours per airplane to replace all of the boost pumps and 0.5 manhour to install the required placard, and that the average labor cost would be $40 per manhour. The required placard would be provided without cost to the operators. The replacement pumps may be reworked from the existing stock at a cost of $2,000 per pump, or purchased new at approximately $9,600 each for main pumps and $12,000 each for override pumps. Based on these figures, the total cost impact of the proposed AD to the U.S. operators is $641,680 for reworked pumps or $3,262,480 for newly purchased pumps. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**Boeing:** Applies to the Model 767–200 series airplanes certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent boost pump seizures in flight, accomplish the following:

A. Within 30 days after the effective date of this AD, install a cockpit placard which limits fuel tank temperatures to –35 °F (–37 °C), in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

B. Within one year after the effective date of this AD, replace at least one fuel boost pump in each main fuel tank and at least one fuel boost pump in each center auxiliary fuel tank (if activated) with an improved boost pump, in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

C. Within two years after the effective date of this AD, replace all fuel boost pumps in each main tank and all fuel boost pumps in each center auxiliary tank (if activated) with improved fuel boost pumps, in accordance with Boeing Service Bulletin 767–28–14 dated June 20, 1984, or later FAA approved revision.

D. The fuel temperature limitation and cockpit placard required by paragraph A., above, may be removed after at least one improved fuel boost pump is installed in each tank location required by paragraph B., above.

Note.—The center auxiliary fuel tank boost pumps need not be replaced on airplanes with deactivated center auxiliary fuel tanks (i.e., those not able to be fueled); however, this deviation must be recorded in the permanent aircraft records. All center auxiliary fuel tank boost pumps must be replaced with the improved boost pumps identifed in Boeing Service Bulletin 767–82–14 prior to activation of the center auxiliary fuel tank.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97–499, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 31, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84–23898 Filed 9–10–84; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 84–NM–40–AD]**

## Airworthiness Directives; British Aerospace Model HS 748 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes an airworthiness directive (AD) that would require inspections, modifications, and repairs as necessary, to passenger and cargo door components on certain British Aerospace Model HS 748 airplanes to correct improper door closing, jamming and false closing indications. Certain unsafe conditions have been discovered relative to doors jamming, improper latching indications, and locking mechanism failures. This action is necessary to ensure that all doors properly close and lock.

**DATE:** Comments must be received no later than October 29, 1984.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace, Inc., Librarian, Box 17414, Dulles International Airport, Washington, D.C. 20041 or may also be examined at the Foreign Aircraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East

Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**
Mr. Sulmo Mariano, Foreign Aricraft Certification Branch, ANM–150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431–2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–40–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of a number of unsafe conditions that may exist on the passenger and cargo door components of British Aerospace Model HS 748 airplanes. These may be corrected by incorporating ten (10) separate mandatory service bulletins. The unsafe conditions and corrective actions are described as follows:

A. Modification 6853 is designed to prevent locking of the baggage door from the outside of the airplane, thus insuring that the door is properly locked from the inside by a crew member. A wear indicator plate is also installed to show when cam replacement is necessary to prevent jamming. (Reference: British Aerospace HS 748 Service Bulletin 52/94)

B. Modification 6856 prescribes the installation of a wear indicator plate on passenger and crew/freight doors to show when cam replacement is necessary to prevent jamming. (Reference: British Aerospace HS 748 Service Bulletin 52/95)

C. Modification 6859 prescribes the installation of improved door aperture micro switch mountings and switches on baggage, passenger, and crew/freight doors for all airplanes except those equipped with the large freight door, or which have incorporated modifications 3133 or 3146, to prevent false door unsafe warnings. (Reference: British Aerospace HS 748 Service Bulletin 52/96)

D. Modification 6862 prescribes the installation of decal warning labels on passenger, baggage, and crew/freight doors to correctly llustrate the locking indications as given by the mechanical indication system. (Reference: British Aerospace HS 748 Service Bulletin 52/97)

E. Modification 6974 prescribes the installation of improved door aperture micro switch mountings and switches on baggage and crew/freight doors for all aircraft (except those incorporating modifications 3133 or 3146) equipped with a large freight door to prevent false door unsafe warnings. (Reference: British Aerospace HS 748 Service Bulletin 52/99)

F. Modification 6975 prescribes the installation of decal warning labels on the forward sliding position of the large freight door to correctly illustrate the locking indications as given by the mechanical indication system. (Reference: British Aerospace HS 748 Service Bulletin 52/100)

G. An inspection of the crew/freight door swivel level for cracks and a life limit on the lever is required to prevent failure of the crew/freight door locking mechanism. (Reference: British Aerospace HS 748 Service Bulletin 52/101.)

H. An inspection of the crew/freight, passenger, and baggage doors (including the large freight door) is required to ensure the integrity of the door sills and secondary locking mechanism micro switches and also to detect failure in the door closed position. (Reference: British Aeorspace HS 748 Service Bulletin 52/106.)

I. Modification 7112 prescribes the installation on doors on an aural warning system on all airplanes, except Model 235, to alert the crew if passenger, baggage, or crew/freight doors are not properly closed and locked. (Reference: British Aerospace HS 748 Service Bulletin 52/109.)

J. Modification 7113 prescribes the installation on doors of an aural warning system only on Model 235 airplanes to alert the crew if passengers, baggage, or crew/freight doors are not properly closed and locked. (Reference: British Aerospace HS 748 Service Bulletin 52/110.)

This airplane model is manufactured in the United Kingdom and type certificated in United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilaternal agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, and AD is proposed that would require accomplishment of the previously mentioned corrective actions.

It is estimated that 5 airplanes of U.S. registry would be affected by this AD, that it would take approximately 160 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $3,000 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $47,000. For these reasons, the proposed rule is not considerd to be $47,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**British Aerospace:** Applies to Model HS 748 airplanes certificated in all categories which are listed in the British Aerospace service bulletins specified below. Compliance is required within the time interval specified in each of the following paragraphs, unless previously accomplished:

A. To ensure the baggage door properly locks from the interior, within 180 days after the effective date of this airworthiness directive (AD), modify the baggage door in accordance with British Aerospace HS Service Bulletin 52/94, dated May 14, 1982.

B. To ensure the passenger and crew/freight doors properly lock, within 180 days after the effecive date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/95, dated May 14, 1982.

C. To prevent false door warnings on baggage, passenger, and crew/freight doors within 180 days after the effective date of this AD, modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/96, dated May 14, 1982.

D. To ensure passenger, baggage, and crew/freight doors properly lock, within 90 days after the effective date of this AD, install warning decals to the interior trim of the doors in accordance with British Aerospace HS 748 Service Bulletin 52/97, dated May 14, 1982.

E. To prevent false door warnings on baggage and crew/freight doors, within 180 days after the effective date of this AD,

modify the doors in accordance with British Aerospace HS 748 Service Bulletin 52/99, dated May 14, 1982.

F. To ensure the large freight door properly locks, within 90 days after the effective date of this AD, install warning decals to the interior trim of the door in accordance with British Aerospace HS 748 Service Bulletin 52/100, dated May 14, 1982.

G. To prevent failure of the crew/freight door locking mechanism swivel lever, within 90 days after the effective date of this AD inspect the swivel levels in accordance with British Aerospace HS 748 Service Bulletin 52/101, Revision 1, dated December 1983. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

H. To ensure the intergrity of door sills and secondary locking mechanisms, inspect the crew/freight, passenger and baggage doors (including the large freight door), within 180 days after the effective date of this AD, in accordance with British Aerospace HS 748 Service Bulletin 52/106, dated November 1982. If necessary, replace parts in accordance with the service bulletin instructions. Repetitive inspections must be performed in accordance with the service bulletin instructions.

I. To provide an audible door unsafe warning on all airplanes, except Model 235, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/109, dated October 13, 1982.

J. To provide an audible door unsafe warning on Model 235 airplanes, within 180 days after the effective date of this AD, install an audible warning system in accordance with British Aerospace HS 748 Service Bulletin 52/110, dated October 13, 1982.

K. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

L. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble: the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291; and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 1034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, British Aerospace Model HS 748 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 29, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23897 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 84-NM-69-AD]**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair, as necessary, of the frames adjacent to the forward airstair doorway cutout. The AD is prompted by numerous reports of cracking of these frames. Concurrent cracking of the frames and door cutout internal doubler can result in sudden loss of cabin pressure.

**DATES:** Comments must be received on or before October 29, 1984.

**ADDRESSES:** The service documents may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carlton Holmes, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 431-2926. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-69-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) § 25.571, Amendment 45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The body frames at Body Stations (BS) 351.2 and 360 are in this category of details.

The FAA issued Advisory Circular AC 91-56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental inspection programs for large transport category airplanes. As a result of a structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91-56, the BS 351.2 and 360 frames have been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections in accordance with the Boeing 737 Supplemental Structural Inspection Document, DC-37089. The BS 351.2 and

360 forward airstair frames are referenced in that document as critical details, with a known service history, which require continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Continued operation with cracks in this structure could result in sudden loss of cabin pressure, possible blowout of the airstair door, or the inability to carry failsafe loads required under FAR 25.571(b). Consequently, this proposed AD, if adopted, would require inspection and, if necessary, replacement or modification of the affected structure.

Boeing Service Bulletin 737-53A1064 was issued to advise operators to inspect the body frames at BS 351.2 and 360 in the area of the airstair. Ten operators reported 22 cracked frames at BS 360, and 11 cracked frames at BS 351.2 on a total of 30 aircraft. The cracks are attributed to fatigue.

It is estimated that 200 airplanes of U.S. registry would be affected by this AD, and that approximately 4 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $32,000. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

Boeing: Applies to all Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737-5A1064, Revision 3, or later FAA approved revisions. To prevent sudden loss of cabin pressure resulting from undetected frame cracking, accomplish the following (unless previously accomplished) prior to the accumulation of 29,000 landings or within 90 days from the effective date of this AD, whichever occurs later:

A. Visually inspect the Body Station (BS) 351.2 and 360 body frames in accordance with Boeing Service Bulletin 737-53A1064, Revision 3, or later FAA approved revisions. Repeat the internal visual inspection at intervals not to exceed 3000 landings for Group 1 airplanes without external doublers installed in accordance with Boeing Service Bulletin 737-53-1058. For all other airplanes, repeat the inspection at intervals not to exceed 6000 landings.

B. If cracks are detected, repair before further flight in accordance with Service Bulletin 737-53A1064, Revision 3, or later FAA approved revisions, and continue the repetitive inspections of paragraph A., above.

C. As an alternative to the internal inspections required by paragraph A., above, operators may visually inspect the external skin in the area of the forward airstairs door cutout in accordance with Boeing Service Bulletin 737-53A1064, Revision 3, or later FAA approved revisions. Repeat external skin inspections at intervals not to exceed 300 landings.

D. If skin cracks are detected, inspect the frames in accordance with paragraph A., above. Repair cracks in accordance with the Structural Repair Manual or Boeing Service Bulletin 737-53-1058, as applicable.

E. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR §§ 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Modification of airplanes in accordance with Accomplishment Instructions Part II of Boeing Service Bulletin 737-53A1064, Revision 3, or later FAA approved revisions, constitutes terminating action for this AD.

G. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

H. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

I. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this document involves a proposed regulation which (1) is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23891 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 84-NM-67-AD]**

## Airworthiness Directives; Boeing Model 737 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) which would require structural inspections and repair as necessary, of the side of body rib upper chord at Body Buttock Line (BBL) 70.85 and Body Station (BS) 663.75. This action has been prompted by numerous reports of cracking in this vicinity. Failure to detect cracks in the BBL 70.85 rib upper chord prior to their reaching critical length may result in severe reduction of load carrying capability and possible rapid loss of cabin pressure.

**DATES:** Comments must be received on or before October 29, 1984.

**ADDRESSES:** The service documents may be obtained upon request from Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at Federal Aviation Administration, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carlton Holmes, Airframe Branch, ANM-120S, telephone (206) 431-2926. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION**

**Comments Invited**

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84–NM–67–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**Discussion**

The Boeing Company has conducted a structural reassessment of the Model 737 airplane as part of their program to develop a supplemental structural inspection document (SSID) for the airplane. In conducting this reassessment, Boeing used advanced analysis techniques which were not available during the original design and certification of the Model 737, and used as guidelines the requirements of Federal Aviation Regulation (FAR) § 25.571, Amendment 45. The reassessment included structural details that have a history of cracking. The analysis has revealed that certain of these details must receive increased emphasis in the maintenance program of operators to maintain the structural integrity of the airplane. The BBL 70.85 upper rib chord at wing upper surface side-of-body joint is in this category of details.

The FAA issued Advisory Circular AC 91–56 on May 6, 1981, which provides guidelines for the development and implementation of supplemental structural inspection programs for large transport category airplanes. As a result of the structural reassessment of the airplane conducted in accordance with FAA Advisory Circular AC 91–56, the BBL 70.85 rib upper chord has been determined to be critical to the structural integrity of the airplane. The FAA issued a notice of proposed rulemaking (49 FR 12276, March 29, 1984) proposing mandatory inspections per the Boeing 737 Supplemental Structural Inspection Document D6–37089. The BBL 70.85 rib upper chord is referenced in that document as a critical detail, with a known service history, which requires continuing inspections in accordance with a flight safety addendum to the manufacturer's service bulletin. This notice incorporates those continuing inspection requirements. Continued operation with cracks in this vicinity could result in rapid loss of cabin pressure and inability to carry failsafe loads required under FAR 25.571(b).

Boeing Service Bulletin 737–57–1087 was issued to advise operators to inspect the BBL 70.85 rib upper chord for cracks. Thirty five operators have reported 216 cases of cracked upper chords. There have also been reports of skin cracks and BS 663.75 bulkhead fitting cracks.

It is estimated that 250 airplanes of U.S. Registry would be affected by this AD, and that approximately 64 manhours per airplane would be required to perform the necessary inspections. Based on an average labor cost of $40 per manhour, the total cost to the U.S. fleet for accomplishment of the proposed inspections would be $640,000. Therefore, the proposed rule is not considered a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**Boeing:** Applies to Model 737 series airplanes certificated in all categories listed in Boeing Service Bulletin 737–57–1087, Revision 4, or later FAA approved revisions. Unless previously accomplished, upon the accumulation of 10,000 landings or within 90 days from the effective date of this AD, whichever occurs later, to detect cracking which may lead to failure of the BBL 70.85 rib upper chord, accomplish following:

A. Visually inspect the BBL 70.85 rib upper chords in accordance with Table I of the Flight Safety Addendum of Boeing Service Bulletin 737–57–1087, Revision 4, or later FAA approved revisions. Repeat the inspections at intervals not to exceed 5000 landings.

B. If cracks are detected, repair before further flight in accordance with Boeing Service Bulletin 737–57–1087, Revision 4, or later FAA approved revisions, and continue the repetitive inspections of paragraph A., above, at intervals not exceeding 5000 landings.

C. The requirements of this AD are terminated if the Preventative Modification of Part III or the Special Modification of Part IV of Boeing Service Bulletin 737–57–1087, Revision 4, is incorporated.

D. Airplanes may be flown to a maintenance base for repairs or replacement in accordance with FAR §§ 21.197 and 21.199 with prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

E. For purposes of complying with the AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

F. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, Seattle, Washington.

G. Upon request by the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region, may adjust the repetitive inspection intervals in this AD, if the request contains substantiating data to justify the increase for the operator.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at the FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 28, 1984.

Wayne J. Barlow,

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23892 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-117-AD]

## Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to supersede an existing airworthiness directive (AD) applicable to McDonnell Douglas Model DC-9 and Military C-9 Series airplanes that requires inspection and replacement, as necessary, of the spoiler drive link and attach fitting assemblies. Service history indicates that the new components installed as terminating action are subject to cracking and must be periodically inspected. The DC-9-50 and -60 series airplanes are added because they are equipped with these same parts. This action is necessary to detect fatigue cracks, and to prevent failures of either the links or fittings which may permit the spoiler to float, thereby degradating the controllability of the aircraft.

**DATES:** Comments must be received on or before October 29, 1984.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, Cl-750(54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael N. Asahara, Sr., Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2826.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "Availability of NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 83-NM-117-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

Ten operators have reported twenty-four failures of the drive link aft fitting assemblies in the spoiler drive mechanism on aircraft which have logged between 1,713 and 21,912 flight-hours. In addition, operators have reported seven failures of the drive link assemblies in the spoiler drive mechanism on aircraft which have logged between 8,100 and 36,712 flight-hours. Failure of both the link and the fitting assemblies were attributed to metal fatigue. Failure of either the link or the fitting will permit the spoiler to float up, which may result in a sudden uncommanded roll. As a result of subsequent testing and evaluation by the manufacturer, the FAA has determined that replacing both the spoiler drive link and fitting assemblies with newly designed parts will reduce the potential for failure of the spoiler actuating mechanism. McDonnell Douglas DC-9 Service Bulletins 27-228 and 27-229, both dated August 19, 1982, were issued to provide instructions for repetitive inspection of the drive links and attach fittings.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require the inspection and replacement of the spoiler drive links and fittings, as described in McDonnell Douglas Service Bulletin 27-240, basic, or later FAA approved revisions.

It is estimated that 647 domestic airplanes (4 units per aircraft) would be affected by this AD. It would require approximately 6 manhours per airplane to accomplish the required repetitive inspections. The average labor charge would be $40 per manhour. Based on these figures, the total cost is estimated to be $155,280 per fleet inspection cycle. Replacement cost is not considered. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Flexibility Act would be affected.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD which would supersede AD 74-16-02, Amendment 39-2213, dated May 27, 1975:

**McDonnell Douglas:** Applies to all McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, manufacturer's fuselage numbers 1 through 1125, certificated in all categories.

Compliance required as indicated, unless previously accomplished.

To prevent failures of the spoiler drive link(s), P/N 3923250-1, -501 and/or -503; spoiler fitting(s), P/N 3923251-1 and/or -501; and/or flight spoiler actuator, P/N 5913418, accomplish the following:

**Part I**

A. For operators who have accomplished terminating action in accordance with Airworthiness Directive (AD) 74-16-02, Amendment 39-2213, dated May 27, 1975, within the next 3,000 flight hours or 3,000 cycles, whichever occurs first, from the effective date of this AD, and thereafter at intervals not to exceed 3,000 flight hours or 3,000 cycles, perform non-destructive inspection (NDI) in accordance with the instructions contained in McDonnell Douglas Non-Destructive Testing (NDT) Manual, TR 7-1 through 7-4, referenced in McDonnell Douglas DC-9 Service Bulletins 27-228 and/or 27-229, both service bulletins dated August 19, 1982, or later NDT Manual or service bulletin revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—McDonnell Douglas Service Bulletins 27-228 and 27-229, both dated August 19, 1982, and 27-240, dated June 30, 1983, are hereinafter referred to as SB 27-228, SB 27-229, and SB 27-240.

B. For operators who have instituted the program of visual/repetitive inspections in accordance with AD 74-16-02, Amendment 39-2213, dated May 27, 1975, at the next scheduled repetitive inspection, comply with

the instructions in accordance with this AD, as applicable.

C. For operators who have not implemented AD 74-16-02, Amendment 39-2213, dated May 27, 1975:

1. Within the next 300 flight hours or 300 cycles, whichever occurs first, and thereafter at intervals not to exceed 300 flight hours or 300 cycles from the effective date of this AD:

(a) Visually inspect the exposed surfaces on the forward and aft lugs, including the areas surrounding the grease fittings on the spoiler actuating link, and

(b) Visually inspect the exposed surface and areas surrounding the grease fitting on the spoiler fitting.

2. At or prior to the accumulation of an additional 1,000 flight hours or 1,000 cycles, whichever comes first, from first visual inspection on these parts, and thereafter at intervals not to exceed 3,000 flight hours or 3,000 cycles, whichever comes first, institute the program of NDI inspections as required by Part I, paragraph A., above, until terminating action in accordance with Part I, paragraph G., below, is accomplished.

**Note.**—The requirements for visual inspections may be terminated upon instituting the NDI program specified in Part I, paragraph A. of this AD.

D. If no cracks are found in the spoiler drive link or fitting assemblies in the areas identified by Figures 1 through 7 of NDT Manual TR 7-1 through TR 7-4 referenced in SB 27-228 and/or 27-229, continue repetitive inspections in accordance with paragraph A., above, until such time terminating action in accordance with paragraph G., below, is accomplished.

E. If cracks are found in the spoiler drive links or fittings in areas identified by paragraph C., above:

1. Replace with new flight spoiler components, in accordance with paragraph 2, Accomplishment Instructions, Figure 1, of SB 27-240.

2. Replace with spoiler drive link, or aft attach fitting, and continue repetitive inspection in accordance with paragraph A., above, until terminating action in accordance with paragraph G., below, is accomplished.

F. Inspect/modify the flight spoiler actuator assemblies for corrosion, cracking, and wear in accordance with paragraph 2, Accomplishment Instructions, Figure 1, of SB 27-240.

G. Replacement of the flight spoiler components with new components in accordance with SB 27-240, dated June 30, 1983, or later FAA approved revisions, constitutes terminating action for repetitive inspection requirements of this AD.

**Note.**—Accomplishment of the preventive modification in accordance with SB 27-240 will constitute terminating action for the repetitive inspection requirements specified in DC-9 SB 27-228 and SB 27-229, or later approved revisions.

**Note.**—Accomplishment of the applicable inspection (s) specified in this AD will satisfy the special inspection requirements listed in FAA approved McDonnell Douglas Report Number MDC-J8855, Parts III and IV, Revisions A through F, or later FAA approved revisions.

H. Special flight permits may be issued in acordance with Federal Aviation Regulations (FAR) 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

I. Upon the request of an operator, an FAA Maintenance Inspector, subject to approval by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection intervals specified in this AD to permit compliance at an established inspection period of that operator, if the request contains substantiating data to justify the change for that operator.

J. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

**Note.**—For purposes of this AD, if the time in service hours of either the spoiler actuating link or the spoiler fitting cannot be established, the part will be considered to have the same number of time in service hours as the airplane on which it is installed.

**Part II**

Applies to all DC-9 series aircraft, fuselage numbers 1 through 1125, certificated in all categories, as indicated below:

To provide crews with operation information should spoiler float occur, evidenced by abrupt roll, and to provide for a permanent change in the "Emergency Procedures" Section of the FAA approved Airplane Flight Manual (AFM) (and appropriate AFM sections of the operator's manual required by FAR 121.133 and 121.141), accomplish the following:

*A. Placard*

Within 48 hours after effective date of this AD, unless already accomplished, install a placard as close as practicable to the flap position indicator, containing the following wording or an equivalent wording as approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, reading as follows:

*DC-9-10*

"Flap selection excess 20 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternate procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

*DC-9-20, -30, -40, -50, and C-9 (Military Series)*

"Flap selection excess 25 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternate procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

*DC-9-80 Series*

"Flap selection excess 28 degrees must be made prior to 1000 feet AGL. See Section I, AFM for alternative procedures." (The last sentence may be omitted from the placard if the use of alternate landing flap setting is not desired.)

*B. Limitations*

1. The limitations set forth below are effective as of June 14, 1975, for the models DC-9-10 through -40 series, and C-9A and C-9B airplanes; and are effective within 30 days after the effective date of this AD for the Models DC-9-50 and -80 series airplanes.

2. Within 30 days after the effective date of this AD, unless already accomplished, incorporate the "Limitations" set forth below into the Airplane Flight Manual (AFM). Operators shall initiate action to notify and ensure that the flight crewmembers are apprised of these limitations.

*DC-9-10 Series*

*Sec. I Limitations:* (New Title) "Flaps":

"Flap selection excess 20 degrees must be made prior to descending below 1000 feet above ground level except for the following:

Approach and landing may be made with a maximum of 30 degree flap when 15 percent is added to the 50 degree flap landing field length."

*Sec. I Limitations:* Performance and Operating Limitations.

Add a new paragraph as follows:

"When using the 30 degrees flaps for landing, the maximum permissible quick turn around landing weight shown on the plot 'Maximum Permissible Quick Turn Around Landing Weight Flaps Down' in Section IV must be reduced by 15 percent."

*DC-9-20, -30, -40, -50, and C-9 (Military Series)*

*Sec. I Limitations:* (New Title) "Flaps":

"Flap selection excess 25 degree must be made prior to descending below 1000 feet above ground level except for the following:

Approach and landing may be made with a maximum of 25 degrees flap when 20 percent is added to the 50 degree flap landing field length."

*Sec. I Limitations:* Performance and Operating Limitations.

Add a new paragraph as follows:

"When using the 25 degrees flap for landing, the maximum permissible quick turn around landing weight shown on the plot 'Maximum Permissible Quick Turn Around Landing Weight Flaps Full Down' in Section IV must be reduced by 20 percent."

3. The above "Limitations" may be terminated, and the "Placard" removed when operator(s) has implemented the repetitive inspections required by Part I of this AD.

C. Emergency Procedures.

1. The Emergency Procedures set forth below are effective as of June 14, 1974, for the Models DC-9-10 through -40 series, and C-9A and C-9B airplanes; and are effective within 30 days after the effective date of this AD for the Models DC-9-50 and -80 series airplanes.

2. Within 30 days after the effective date of this AD, unless already accomplished, incorporate the "Emergency Procedures" set forth below into the Airplane Flight Manual. These procedures shall constitute a permanent change to the manual. Operators shall initiate action to notify and ensure that flight crewmembers are apprised of this change.

*DC-9-10, -20, -30, -33F, -40, and C-9 (Military Series)*

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap at to 50°, retract immediately to single engine landing flap setting. Adjust speed as required."

*DC-9-34, -50 Series*

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap at to 25°, retract immediately to single engine landing flap setting. Adjust speed as required."

*DC-9-80 Series*

Section II Emergency Procedure (New Title) "Spoiler Float":

"Should rapid roll develop during extension of flap beyond 28°, retract immediately to single engine landing flap setting. Adjust speed as required."

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

**Note.**—For the reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1976); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, small entities operate DC-9 airplanes. A regulatory evaluation has been prepared and has been placed in the public docket. A copy may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on August 30, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region.*

[FR Doc. 84-23887 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

**[Docket No. 84-CE-25-AD]**

## Airworthiness Directives; Paper Induction Air Filters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD) applicable to paper induction air filters. It would impose a life limit of 500 hours time-in-service on these filters. Use of induction air filters beyond the replacement times recommended by filter and airplane manufacturers increases the probability that partial or complete loss of engine power will occur when fragments from deteriorated filters are ingested. The proposed AD will preclude these occurrences. The proposal will not alter current maintenance procedures which require periodic inspection of filters and replacement thereof when necessary due to deteriorated filter condition.

**DATES:** Comments must be received on or before October 28, 1984.

**ADDRESS:** Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 84-CE-25-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Ty Krolicki, FAA, Chicago Aircraft Certification Office, ACE-140C, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018; Telephone (312) 694-7032.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identfy the regulatory docket or notice number and be submitted in duplicate to the Rules Docket at the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-CE-25-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has determined that it is not uncommon for paper induction air filters to be retained in service for periods of time in excess of those recommended by the filter and small airplane manufacturers. Accidents and forced landings have been caused by fragments from disintegrating air filters being ingested into the carburetion system and causing engine stoppage or partial power loss. Since it is likely that this condition exists or will develop on other airplanes equipped with paper induction air filters, the proposed AD would require that all paper induction air filters be replaced at 500 hours time-in-service intervals. The proposal will not alter current maintenance procedures which require periodic inspection of filters and replacement when necessary due to deteriorated filter condition.

The FAA has determined that, although the proposed regulation applies to hundreds of thousands of aircraft, most operators already comply with manufacturers' recommendations regarding inspection and replacement of induction air filters. This AD will affect the relatively small number of operators who do not replace their induction air filters at the time intervals prescribed by the manufacturer, probably not fully appreciating the potentially dire consequences of induction air filter failure. The typical cost of a replacement induction air filter is $32. This cost is so small that compliance with the proposal will not have a significant financial impact on any small entities owning affected airplanes. For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under the provisions of Executive Order 12291; (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3), I certify under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A draft

regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

**Induction Air Filters:** Applies to all paper induction air filters used in small airplanes.

*Compliance:* Required as indicated, unless already accomplished.

To prevent possible engine power loss or stoppage caused by engine ingestion of fragments of a deteriorated induction air filter, accomplish the following:

Within the next one hundred hours time-in-service after the effective date of this AD or prior to the accumulation of 500 hours time-in-service on the filter, whichever occurs later and thereafter at intervals not exceeding 500 hours time-in-service on the filter.

(1) Replace the air filter with a new filter that is FAA approved for the airplane installation.

(2) Use the airplane maintenance records to determine filter time-in-service. Replace within 100 hours time-in-service any filter on which the time-in-service cannot be determined.

**Note.**—This AD does not alter current maintenance procedures which require inspection of paper induction air filters at 100 hours time-in-service and annual inspections and replacement as necessary based on filter condition.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and Sec. 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on August 29, 1984.

**John E. Shaw,**

*Acting Director, Central Region.*

[FR Doc. 84–23888 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 65**

**[Docket No. 24233; Notice No. 84–16]**

## Issuance and Renewal of Inspection Authorization

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This proposal would allow persons who have had their mechanic certificate or rating suspended to be eligible for issuance or renewal of an inspection authorization (IA) if their mechanic certificate or ratings have been reinstated. It is needed to revise an unnecessarily strict requirement for original issuance of an IA and would reduce a double penalty imposed on those holders of an IA who became ineligible for renewal because their mechanic certificate or ratings were not continuously in effect during the 3-year period preceding the annual renewal date.

**DATES:** Comments must be received on or before October 11, 1984.

**ADDRESS:** Comments on this proposal may be delivered or sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–204), Docket No. 24233, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Mayernik, General Aviation and Commercial Branch, AWS–340, Aircraft Maintenance Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426–8203.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such writtren data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impacts that might result from adoption of the proposals contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24233." The postcard will be dated, time stamped, and returned to the commenter.

**Availability of NPRM**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426–8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11–2, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

**Background**

Section 65.93 of the Federal Aviation Regulations (FAR's) provides that to be eligible for the renewal of an IA an applicant must present evidence that, among other things, he or she still meets the requirements of § 65.91(c) (1) through (4) for the original issuance of an IA. Before Amendment 65–22 (42 FR 46278; September 15, 1977), § 65.91(c)(1) provided that to be eligible for an IA, an applicant had to be "a certificated mechanic who has held both an airframe and a powerplant rating for at least 3 years before the date he applies." Amendment 65–22 revised paragraph (c)(1) to require that the applicant hold "a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective *and has been continuously in effect* for not less than the 3-year period immediately before the date of application." (Emphasis added.)

When renewal was sought under the old rule, the holder of an IA whose mechanic certificate or rating was suspended could still be said to have "held" that certificate during the time of suspension. However, the certificate could not be said to be "in effect" while it was suspended. Accordingly, after Amendment 65–22, the IA could not be renewed at the end of the year because at renewal time (authorization expires on March 31) the mechanic certificate or rating would not have been continuously in effect during the preceding 3 years. Therefore, the mechanic would not be eligible again for an IA until 3 years after the end of the suspension of the mechanic certificate. Moreover, because the eligibility requirements for issuance of a certificate are considered to be continuing requirements which must be met as long as a certificate is held, an IA

does not "become effective" again under § 65.91 at the end of the suspension of the mechanic certificate.

At the time Amendment 65–22 was adopted, the FAA was aware that adding the words "continuously in effect" to § 65.91(c)(1) would have this result. It was considered appropriate because the privileges and responsibilities that a person is charged with while holding the IA are greater than those of a certificated mechanic. Under § 65.95 the holder of an IA may inspect and approve for return to service certain aircraft or related parts or appliances after a major repair or major alteration to it in accordance with Part 43 and perform annual and progressive inspections. Although a mechanic is authorized to perform much of the associated maintenance work underlying these functions, the IA holder is ultimately responsible for ensuring that the work is done in accordance with the FAR's.

This 3-year-long period of ineligibility, however, has had an unintended inhibiting effect on the FAA's enforcement program. Amendment 65–22 has had a significant impact on the action taken against a mechanic for relatively minor to moderate violations. As a result of Amendment 65–22, a short term suspension of a certificate or rating for a relatively minor offense effectively revokes an IA for a period of 3 years. Further, this creates the unusual situation where an action for revocation of an IA could have less of an impact on the mechanic involved than a 5-day suspension of a single rating on his or her mechanic certificate. (In most cases, a mechanic whose IA has been revoked may reapply after 1 year.) Not every action that warrants the suspension of a mechanic certificate evidences a lack of responsibility sufficient to justify such a long-term ineligibility for an IA. As a result, enforcement personnel have been reluctant in some cases to produce such results.

In attempting to resolve this problem, the FAA has reviewed the requirement of § 65.91(c)(1), and has determined that it is unnecessary as a means of ensuring that only responsible persons continue to exercise IA privileges during the period of suspension. First, the suspension or revocation of a mechanic certificate or rating does result in loss of IA privileges. Section 65.92(a) provides that the holder of an IA may exercise the privileges of that authorization only while he holds a currently effective mechanic certificate with both a currently effective airframe rating and a currently effective powerplant rating. In addition, the cause that gave rise to suspension of the IA holder's mechanic certificate or rating may also warrant suspension of an IA for a longer period of time and may even justify revocation of the IA. Revocation of the IA may be justified when the person's actions evidence a lack of responsibility indicating that the mechanic should not be allowed to exercise the inspection and other privileges prescribed by § 65.95.

Accordingly, the FAA proposes to return to the requirements which existed prior to Amendment 65–22 and clarify those requirements to provide that an otherwise eligible applicant need only hold a currently effective mechanic certificate with both an airframe and a powerplant rating which has been in effect for a total of at least 3 years. This revision would remove any inequity associated with the renewal process and provide a more flexible and fair enforcement program for IA holders, without derogation of original certification standards.

**Economic Evaluation**

This proposal would relax an unnecessary requirement for original issuance or renewal of an IA. It would reduce a double penalty currently imposed on IA holders who become ineligible for renewal, as a result of a suspension, solely because the mechanic certificate or rating(s) was not continuously in effect during the 3-year period preceding the annual renewal. The FAA finds that the anticipated economic impact is so minimal that an economic analysis is unwarranted. Moreover, the FAA finds that this proposal will not have a significant economic impact, positive or negative, on a substantial number of small entities. This is so because, although the enforcement impact of this proposal may be significant, the number of persons unable to renew their IA is small relative to the total number of IA holders.

**Conclusion**

This proposal would relax the requirements for initial issuance and renewal of an inspection authorization and would impose no additional burden on any person. Accordingly, it has been determined that: this action is not a major rule under Executive Order 12291, and it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For these reasons and because the number of persons who would be unable to renew their IA if the current rule is not changed is minimal in comparison to the total number of IA holders, I certify that under the criteria of the Regulatory Flexibility Act, this proposal would not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the FAA has determined that the expected economic impact of this proposal is so minimal that a full regulatory evaluation is not required.

**List of Subjects in 14 CFR Part 65**

Airmen other than flight crewmembers, Inspection authorization, Mechanic certification, Aircraft, Aviation safety.

**Proposed Rule**

Accordingly, it is proposed to amend § 65.91 of Part 65 of the Federal Aviation Regulations (14 CFR Part 65) as follows:

## PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

By revising § 65.91(c)(1) to read as follows:

**§ 65.91 Inspection authorization.**

* * * * *

(c) * * *

(1) Hold a currently effective mechanic certificate with both an airframe rating and a powerplant rating, each of which is currently effective and has been in effect for a total of at least 3 years;

* * * * *

(Secs. 313(a), 314(a), 601 through 610 and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983))

Issued in Washington, DC, on August 15, 1984.

**Joseph A. Pontecorvo,**

*Deputy Director of Airworthiness.*

[FR Doc. 84–23903 Filed 9–10–84; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 71**

**[Airspace Docket No. 84–ASW–39]**

## Proposed Alteration of Transition Area; Refugio, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Aviation Administration proposes alteration of the transition area at Refugio, TX. The intended effect of the proposed action is to provide controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Mellon Ranch Airport. This action is necessary since the nondirectional

radio beacon (NDB) SIAP is being revised to approach the airport in different direction than the current procedure, thereby requiring realignment of designated 700-foot transition area.

**DATE:** Comments must be received on or before October 26, 1984.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8 a.m. and 4:30 p.m. The FAA Rules Docket is located in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101; telephone: (817) 877-2630.

**SUPPLEMENTARY INFORMATION:**

**History**

Federal Aviation Regulation Part 71, Subpart G 71.181 as republished in FAA Order 7400.6, Compilation of Regulations, dated January 3, 1984, contains the description of transition areas designed to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the transition area at Refugio, TX, will necessitate an amendment to this subpart. This amendment will be required at Refugio, TX, since there is a proposed revised SIAP to the Mellon Ranch Airport which approaches the airport in a different direction from the current procedure. In addition, the SIAP to the O'Conner Airport has been canceled, thereby eliminating the need for airspace designated for this airport.

**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. (Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals.) Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ASW-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM**

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, or by calling (817) 877-2630. Communications must identify the notice number of this MPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the office listed above.

**List of Subjects in 14 CFR Part 71**

Control zones, Transition areas, Aviation safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**Refugio, TX Revised**

That airspace extending upwards from 700 feet above the surface within a 5-mile radius of the Mellon Ranch Airport (latitude 28°16'50" N., longitude 97°12'40" W.), and within 3 miles each side of the 345° and 145° bearing of the Mellon Ranch NDB (latitude 28°16'41" N., longitude 97°12'31" W.) extending from the 5-mile radius area to 8.5 miles north and south of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); Sec. 6(c), 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.61(cj)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Forth Worth, TX, on August 20, 1984.

**F.E. Whitfield,**

*Acting Director, Southwest Region.*

[FR Doc. 84-23972 Filed 9-10-84; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 71**

**[Airspace Docket No. 84-ASO-18]**

## Proposed Designation of Transition Area; Palatka, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate the Platka, Florida, transition area to accommodate Instrument Flight Rule (IFR) operations at Kay Larkin Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Palatka Non-directional Radio Beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

**DATES:** Comments must be received on or before October 10; 1984.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should idenfity the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———. " The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Palatka, Florida, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Kay Larkin Airport. If the proposed designation of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Airspace, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Palatka, Florida, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**Palatka, FL—[New]**

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Kay Larkin Airport (Lat. 29°39'30" N., Long. 81°41'20" W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

*Acting Director, Southern Region.*

[FR Doc. 84-23974 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 84-ASO-19]**

## Proposed Alteration of Transition Area; Rome, GA

**AGENCY:** Federal Aviation Administation (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the Rome, Georgia, transition area by revising the coordinates of two airports and designating a transition area arrival extension. The coordinates of the airports are inaccurate and this action will correct the errors. The McDaniels radio beacon (RBN), which was previously located on Tom B. David Field, has been relocated to a new site three miles south of the airport. This relocation necessitates a change in instrument approach procedures which requires the designation of a transition area arrival extension. Thus, the floor of controlled airspace south of Tom B. David Field must be lowered from 1,200 to 700 feet above the surface for protection of Instrument Flight Rule (IFR) aeronautical activities.

**DATE:** Comments must be received on or before October 14, 1984.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Donald Ross, Supervisior, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal

contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) which will correct the coordinates to two airports and designate additional 700-foot transition area south of Tom B. David Field. The additional transition area will provide controlled airspace for aircraft executing new instrument approach procedures to David Field. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6 dated January 3, 1984.

**List of Subjects in 14 CFR 71**

Aviation safety, Airspace, Transition areas.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend the Rome, Georgia, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

**Rome, GA—[Revised]**

That airspace extending upward from 700 feet above the surface within a 12-mile radius of Richard B. Russell Airport (Lat. 34°21'03" N., Long. 85°09'30" W.); within 5 miles each side of Rome VORTAC 350° radial, extending from the 12-mile radius area to the VORTAC; within a 9.5-mile radius of Tom B. David Field (Lat. 34°27'26" N., Long. 84°56'23" W.); within 3 miles each side of the 169° bearing from Calhoun RBN (Lat. 34°24'05" N., Long. 84°55'36" W.), extending from the 9.5-mile radius area to 11.5 miles south of the RBN; excluding those portions which coincide with the Dalton and Cartersville, GA, transition areas.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983))

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in East Point, Georgia, on August 22, 1984.

J. Stiglin,

*Acting Director, Southern Region.*

[FR Doc. 84-23973 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Ch. I

## Advance Notice of Proposed Customs Regulations Amendments Relating to Storage by Customhouse Brokers of Liquidated Entries

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Advance notice of proposed rulemaking and solicitation of comments.

**SUMMARY:** Customs has under review several initiatives regarding the retention and disposition of records as part of its goal of improving paperwork management procedures. The purpose of this advance notice is to inform the public that to reduce Customs storage costs for liquidated entries and improve service to customhouse brokers, Customs is considering an initiative to require brokers to store entry documents for a 1-year period after liquidation. Expenses incurred in transporting the documents to and from a broker, and broker storage expenses, would be borne by each broker.

Presently, entry documents are retained by Customs, normally at the customhouse in the port where filed, for a period of one year after liquidation. After that time, Customs transfers the entry documents to a Federal Records Center for an additional 7-year period.

Customs is considering the feasibility and desirability of transferring the entry documents from Customs to brokers immediately after liquidation for storage by brokers for a 1-year period and then returning the records to Customs to be transferred to a Federal Records Center.

The public is invited to comment on this initiative as well as suggest alternatives which will accomplish the objective of improving Customs paperwork management procedures. If it is determined to proceed with this initiative, amendments to the Customs Regulations will be necessary, and will be the subject of a notice of proposed rulemaking published in the **Federal Register.**

**DATE:** Comments must be received on or before November 13, 1984.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Robert B. Stenstron, Duty Assessment Division (202-566-5492), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**SUPPLEMENTARY INFORMATION:**

**Background**

Due to the ever increasing number of commercial transactions processed by Customs each year, and restrictions on personnel and resources, Customs is continually attempting to find new ways of improving service, reducing paper processing, and saving money. Maintenance and disposal of United States government records is governed by a series of laws codified by title 44, United States Code.

Customs has undertaken numerous initiatives relating to the processing of imported merchandise which are cost beneficial to the Government and provide improved service to the importing public. With a current annual volume of 5 million formal entries, alternatives to the traditional on-site storage of records by Customs at each port are being studied. The burden of handling and storing relatively inactive records is reaching a critical point. With increasing entry volume, and space and staff restrictions, it may not be possible for Customs to continue to provide a satisfactory level of service in the entry filing and retrieval activity. This would

be detrimental to the Government and the importing public, and therefore, alternative procedures are needed.

Based on a 1983 survey of all Customs regions, direct storage costs for liquidated entries is approximately $1.7 million per year. Of this amount, 60 percent is for personnel who sort, file, and retrieve entries, and the remaining 40 percent covers storage space, purchase of filing cabinets, and related costs. Aside from transportation costs to a servicing Federal Records Center, there are no charges by the General Services Administration for the 7-year period of final storage.

Pursuant to § 159.1, Customs Regulations (19 CFR 159.1), liquidation means the final computation or ascertainment of duties accruing on an entry of merchandise. Entries are generally liquidated within one year from the date of entry of the merchandise.

The majority of all formal entries are filed with Customs by customhouse brokers. Section 111.1(b), Customs Regulations (19 CFR 111.1(b)), defines customhouse broker to mean a person who is licensed under Part 111, Customs Regulations, to transact Customs business on behalf of others.

Customs is considering an initiative to require customhouse brokers to store Customs entry documents for a 1-year period after liquidation.

### Current Procedure

Entry documents are retained by Customs, normally at the customhouse in the port where filed for a period of one year after liquidation. During this period, a broker may request Customs to provide copies of entry documents (e.g., to file a fully documented protest within 90 days after a notice of liquidation or reliquidation). Approximately 4 percent of the stored liquidated entry documents are recalled during that 90-day period, decreasing to less than 2 percent after that time. Nearly all recalls in the 90-day period are requests from the trade community. Customs may have need to retrieve entry documents from its own files, but this usually occurs after the 90-day period and amounts to less than 1 percent of the stored liquidated entry documents.

After a period of one year after liquidation at a port, Customs transfers the liquidated entry documents to a Federal Records Center for an additional 7-year period.

### Proposal

Customs is considering the feasibility and desirability of transferring entry documents from Customs to brokers immediately after liquidation for storage by brokers for a 1-year period and then returning the records to Customs to be transferred to a Federal Records Center.

Documents to be transferred to brokers include:

1. Customs Form 7501 (all types);
2. Customs Form 5101;
3. Customs Form 3461;
4. Customs Form 5106;
5. Single entry bonds;
6. Certifications;
7. Commercial invoices;
8. Packing slips; and
9. All other supporting papers which comprise the "Entry Summary" package.

Customs would retain one copy of Customs Form 7501 in its file.

Under the proposal, Customs would sort liquidated entry documents according to the name of a broker. Changed entries with refunds due would be kept separate for certification against a check listing. Each cycle of liquidated entries would be grouped. When the bulletin notice has been received, and check listing verified, the corresponding batch of liquidated entries and a copy of the pertinent part of the bulletin notice are prepared for the broker's messenger.

A broker's messenger would collect at the customhouse the prepared batch of liquidated entries and the notice covering those entries. A receipt, showing the cycle, date of liquidation, date of pick-up, and names of the broker and messenger, would be signed by the messenger.

Where possible, broker pick-up is encouraged to be scheduled on the Friday preceding the date of the liquidation cycle to provide brokers some advance notice of liquidation.

A broker would sort the entry documents by fiscal year and entry number. Missing entries would be brought to the attention of Customs and extraneous entries returned. Entries not found by either party would be reconstructed by the broker from the file.

Any entry needed by Customs for review because of a protest, petition, drawback, or other reason, would be returned to Customs under a weekly request procedure. A broker's file would show the "out" status of the entry, reason, and eventual date of return, so that file integrity would be maintained.

A broker would return each batch of entry documents one year after liquidation. A return receipt would indicate the names of the broker and messenger, date, date of liquidation, cycle number, and certifiction of bulletin notice for entries being returned.

Expenses incurred in transporting the documents to and from a broker, and broker storage expenses, woud be borne by each broker.

Customs would verify the contents of the returned batch of entry documents from each broker. A control report would be prepared monthly for use by Customs local management. The entry documents would be prepared as soon as possible for transportation to a Federal Records Center for final storage.

Customs believes that adoption of this initiative will reduce Customs storage costs for liquidated entries and improve service to brokers. Because a majority of retrievals of entry documents occur in the first 90-days after liquidation and most are initiated by brokers, retention of the entry records on a broker's premise would facilitate the broker's filing of a documented protest pursuant to 19 U.S.C. 1514, requests for reliquidation of an entry pursuant to 19 U.S.C. 1520(c), and drawback claims filed pursuant to 19 U.S.C. 1313. Additionally, brokers would receive some advance notice of liquidation.

If it is decided to proceed with this matter, amendments to the Customs Regulations will be necessary and will be the subject of a notice of proposed rulemaking published in the **Federal Register**.

### Alternative

In the overall effort by Customs to improve service to the trade community and reduce storage costs at the same time, various alternatives to processing entry documents after liquidation are under study. For example, the use of micrographics for stored entries is being considered. Comments are solicited on the use of appropriate technologies for the storing of liquidated entries.

### Comments

Customs invites written comments (preferably in triplicate) from all interested parties on this initiative as well as suggestions for alternatives which will accomplish the objective of improving Customs paperwork management procedures.

Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service, Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

### Executive Order

It does not appear that the initiative will result in a regulation which is a "major rule" as defined by section 1(b) of Executive Order 12291.

### Regulatory Flexibility Act

This initiative, if promulgated, may have a significant economic impact on a substantial number of small entities and thus require an initial regulatory flexibility analysis in accordance with the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). If it is decided to proceed with this matter, the notice of proposed rulemaking will (1) have as an attachment the initial regulatory flexibility analysis or (2) contain a certification by the Secretary that the analysis is not, in fact, required.

### Paperwork Reduction Act

If it is determined to proceed with this initiative, the notice of proposed rulemaking will address the paperwork burden pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 and will be subject to review by the Office of Management and Budget (OMB).

### Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759 (19 U.S.C. 1641).

### Drafting Information

The principal author of this document was Charles D. Ressin, Regulations Control Branch, Office of Regulations and Rulings, U.S. Custom Service. However, personnel from other Customs offices participated in its development.

**William von Raab,**

*Commissioner of Customs.*

Approved: August 17, 1984.

**John M. Walker, Jr.,**

*Assistant Secretary of the Treasury.*

[FR Doc. 84-23961 Filed 9-10-84; 8:45 am]

BILLING CODE 4820-02-M

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## 19 CFR Parts 18, 24, 112, 141, 144, 146, and 191

## Foreign Trade Zones; Proposed Specialized and General Provisions

**AGENCY:** U.S. Customs Service, Treasury.

**ACTION:** Notice of extension of time for submissions of comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may sumit writtens comments concerning the proposed revision of the Customs Regulations relating to foreign trade zones, which were published in the **Federal Register** on July 17, 1984 (49 FR 28855). Comments were to have been received on or before October 15, 1984.

The National Association of Foreign Trade Zones has requested Customs to extend the comment period because of the complexity and extent of the proposed regulations, and the need of its members to analyze all of the provisions. They also note that the proposal was published at the height of the summer vacation season, and that their annual meeting will be held just after the expiration of the comment period. Customs believes that the request has merit. Accordingly, to give ample time to review and analyze the proposal and to prepared written responses, the period of time for the submission of comments is extended to November 30, 1984.

**DATE:** Comments are requested on or before November 30, 1984.

**ADDRESS:** Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

All comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:**

General operational aspects: John Holl or Louis Razzino (202-566-8151).

Inventory control and recordkeeping system aspect: Matt Krimski (202-566-2812).

Appraisement and valuation aspect: Myles Flynn (202-566-5307).

Liquidated damages, penalty and suspension aspect: William Lawlor (202-566-5856).

Economic aspect: Daniel Norman (202-566-5307).

All of the above Customs personnel are located at U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Dated: September 4, 1984.

**John P. Simpson,**

*Director, Office of Regulations and Rulings.*

[FR Doc. 84-23962 Filed 9-10-84; 8:45 am]

BILLING CODE 4820-02-M

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## DEPARTMENT OF EDUCATION

## 34 CFR Part 32

## Salary Offset for Department of Education Employees To Recover Overpayments of Pay or Allowances

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The secretary proposes regulations that would establish rules for offsetting a debt against the Federal pay of a current or former employee of the Department of Education to recover an overpayment of pay or allowances. These regulations would implement the amendments required under the Debt Collection Act of 1982. An employee who has been overpaid will be given the opportunity to enter into a voluntary repayment agreement or to show that an offset of the statutory maximum of 15 percent of disposable pay will create an extreme financial hardship. The employee may request a hearing to contest the Secretary's determination of the existence or amount of the overpayment and an involuntary repayment schedule.

**DATES:** Comments must be received on or before October 11, 1984.

**ADDRESSES:** Comments should be addressed to Emma Mapp, Office of Personnel Resource Management, Room 1083, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 245-3087.

**SUPPLEMENTARY INFORMATION:**

### Background

Prior to passage of the Debt Collection Act of 1982, Pub. L. 97-365, the heads of agencies were authorized under section 5514 of Title 5, United States Code, to offset an erroneous overpayment of pay from the disposable pay of Federal employees. The amendments to 5 U.S.C. 5514 made by the Debt Collection Act of 1982 expand that authority to offset debts owed to the United States but impose new procedural requirements and limit the offset to 15 percent of the employee's disposable pay. Disposable pay is defined in the law as gross Federal pay minus deductions required by law to be withheld. The deductions include amounts withheld for Federal, State, and local income taxes, Social Security taxes, and Federal retirement programs.

The law establishes procedures to protect the interests of employees. Thus, at least 30 days before an offset may be initiated, the head of the agency which made the overpayment must notify the employee that he or she (1) is indebted

to the United States, (2) may inspect and copy Government records relating to the overpayment, (3) may enter into an agreement with the head of the agency concerning a repayment schedule, and (4) may request a hearing contesting the existence or amount of the debt, or an involuntary repayment schedule.

The Secretary of Education is proposing regulations to implement the amendments to 5 U.S.C. 5514 made by the Debt Collection Act of 1982 with regard to employees of the Department who are overpaid pay or allowances.

The proposed regulations implement the new procedural requirements and protect the Government's interest in recovering overpayments of pay or allowances in a cost-effective and expeditious manner. They provide for the Secretary to notify the employee of the amount of the overpayment and give the employee an opportunity to arrange for voluntary repayment, request a waiver or submit a financial statement requesting a reduction of an involuntary offset.

In addition, the proposed regulations establish the procedures for requesting and holding a pre-offset hearing. An employee who desires a hearing must request a hearing in writing within 15 days of the notice of the overpayment or withing 5 days of a denial of a waiver. The additional time allowed when a waiver is requested is to avoid unnecessary hearings if a waiver is granted. Employees must state in their request all the reasons why they contest the overpayment and must also provide a copy of all documents on which they are relying on the allegations of an individual must supply a statement in the form of an affidavit from that individual. Employees submit a hearing request to the designated hearing official and to the Secretary.

The issues at a hearing are limited to a review of the existence or amount of the debt or an involuntary repayment schedule. The latter issue will be reviewable only at a hearing when the employee has timely submitted a prior response to the Secretary with a verified financial statement showing that an involuntary deduction of 15 percent of the employee's disposable pay will create extreme financial hardship. In passing this legislation amending 5 U.S.C. 5514, Congress intended to aid the Government in recovering amounts owed to the United States in a cost effective manner without the need to pursue relatively small claims through litigation. That purpose is served by giving the Secretary the opportunity to review an employee's claim of extreme financial hardship before the issue is raised at a hearing. If the Secretary agrees with the employee and reduces the rate of an involuntary deduction, unnecessary hearings can be avoided, and the goal of reducing the Agency's cost of recovery is served.

The Secretary's denieal of a waiver of the overpayment is not reviewable at the hearing. Under 4 CFR Part 91, the denieal of a waiver of an erroneous overpayment over $500 by the agency head is subject to review by the Comptroller General. Thus, it is beyond the authority of the hearing official to review this issue.

In most instances when an employee is overpaid, the existence and amount of the overpayment are established by documentary evidence from the Agency's Personnel and Payroll Offices. Thus, a determination and review of these matters rarely involve issues of credibility or veracity of an individual. Similarly, because these regulations would require the employee contesting the involuntary repayment schedule to document the alleged extreme financial hardship by a verified financial statement, issues of credibility or veracity should rarely arise with respect to an involuntary repayment schedule. Thus, it is generally unnecessary for the hearing official to weigh the credibility of witnesses in an oral hearing to review the issues of the existence or amount of the overpayment or the involuntary repayment schedule. Accordingly, the proposed regulations provide that the hearing is conducted on the written submissions. Where the statute does not require an oral hearing, as under 5 U.S.C. 5514, case law provides that a "paper hearing" may be sufficient to protect the interests of the employee. See, *Gray Panthers* v. *Schweiker*, 652 F. 2d 148, footnote 3 (D.C. Cir. 1981).

Where the Secretary, in his discretion, determines that a reviewable matter rests on an issue of credibility or veracity of an individual or cannot be resolved by a review of the documentary evidence, the Secretary notifies the employee of the right to elect an oral hearing. This limited exception to a hearing on the written submissions complies with the standard established under the General Accounting Office (GAO)/Department of Justice Joint Regulations on offset, 4 CFR 102.3(b), and case law. See, *Califano* v. *Yamasaki*, 442 U.S. 682 (1979).

When an oral hearing is provided, the hearing is informal in nature and is in the form of an oral argument. Employees may testify on their own behalf. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant. The employee may represent himself or herself, or be represented by another person whose representation does not create an actual or apparent conflict of interest. The Secretary and the employee each argue their cases by reference to the documents previously submitted. The hearing can be conducted by conference call for all employees outside the Washington D.C. area, at the request of the employee or at the discretion of the hearing official.

When an employee requests an oral hearing but fails to appear as scheduled, the Secretary's decision is affirmed. The statute gives the employee the opportunity to request review of the Secretary's decision by an independent party. The employee who does not appear has been given the opportunity required by statute. No further rights are provided. While Congress granted employees certain procedural protections by allowing review rights, it also intended that the Government minimize the cost of recovery of the debts. The employee should not be allowed to increase those costs arbitrarily by his or her failure to follow up on a hearing request.

The hearing official is not an employee of the Department or under the supervision or control of the Secretary. The hearing official issues a written decision within 60 days of the request for the hearing. The hearing official may reverse the Secretary's determination on a reviewable matter only where the determination is clearly erroneous. A determination is "clearly erroneous" when although there is evidence to support it, the reviewing party considering the evidence as a whole is left with a definite and firm conviction that a mistake was made.

**Paperwork Reduction Act of 1980**

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

These regulations do not affect small entities. They affect only current or former individual employees of the Department.

**Invitation to Comment**

The Secretary invites interested persons to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments submitted on or before the 30th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 1083, FOB–6, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., (EDST) Monday through Friday of each week except Federal holidays.

**List of Subjects in 34 CFR Part 32**

Administrative practices and procedures, Debt collection, Federal employees.

**Citation of Legal Authority**

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

Dated: September 5, 1984.

**T.H. Bell,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance number does not apply)

The secretary proposes to add a new Part 32 to Title 34 of the Code of Federal Regulations to read as follows:

## PART 32—SALARY OFFSET FOR DEPARTMENT OF EDUCATION EMPLOYEES TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES

Sec.



Authority: 5 U.S.C. 5514, as amended by Sec. 5 of Pub. L. 97–365, 96 Stat. 1751–1752.

### § 32.1 Scope

(a) The Secretary establishes the standards and procedures in this part that apply to the deductions from disposable pay through offset of a current or former employee of the Department of Education to recover overpayments of pay or allowances.

(b) This part does not apply to—

(1) Recovery through offset of an indebtedness to the United States by an employee of the Department under a program administered by the Secretary of Education covered under 34 CFR Part 31;

(2) The offset of an indebtedness to the United States by a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States;

(3) The offset of any payment to an employee of the Department of Education which is expressly allowed under statutes other than 5 U.S.C. 5514; or

(4) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(5 U.S.C. 5514)

### § 32.2 Definitions.

The following definitions apply to this part:

"Disposable pay" means the amount that remains from an employee's Federal pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former employee of the Department of Education.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay.

"Secretary" means the Secretary of Education or the Secretary's designee.

(5 U.S.C. 5514)

### § 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

(a) The origin, nature and amount of the overpayment;

(b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(5 U.S.C. 5514)

### § 32.4 Employment response.

(a) *Voluntary repayment agreement*—Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under paragraph (b) of this section.

(b) *Waiver*—An employee seeking a waiver of the overpayment that is authorized by law must request the waiver in writing to the Secretary within 7 days of receipt of the written notice under § 32.3 The employee must state

why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule*—If the employee claims that an involuntary deduction of 15 percent of disposable pay will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 7 days of receipt of the written notice under §32.3. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at a hearing under § 32.5. The Secretary notifies the employee, in writing, whether the Secretary will reduce the rate of the involuntary deduction.

(5 U.S.C. 5514)

**§ 32.5 Pre-offset hearing—general.**

(a) An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing. The pre-offset hearing does not review—

(1) The denial of a waiver of repayment under 5 U.S.C 5584;

(2) The involuntary repayment schedule or financial hardship caused by deduction of 15 percent of the employee's disposable pay, unless the employee has submitted the financial statement and response required under § 32.4(c); and

(3) The determination under paragraph (b) of this section that the pre-offset hearing is on the written submissions.

(b) Unless the Secretary determines that a matter reviewable under paragraph (a) of this section turns on an issue of credibility or veracity or cannot be resolved by a review of the documentary evidence, the pre-offset hearing is on the written submissions.

(c) A pre-offset hearing is based on the written submissions for overpayments arising from—

(1) A termination of a temporary promotion;

(2) A cash award;

(3) An erroneous salary rate;

(4) Premature granting of a within-grade increase;

(5) A lump sum payment for annual leave;

(6) Unauthorized appointment to a position;

(7) An error on time and attendance records; or

(8) Other circumstances where the Secretary determines that an oral hearing is not required.

(d) The hearing is conducted by a hearing official who is not an employee on the United States Department of Education or under the supervision or control of the Secretary.

(e) Formal discovery between the parties is not provided.

(U.S.C. 5514)

**§ 32.6 Request for a pre-offset hearing.**

(a) Except for an employee who has requested a waiver of repayment under § 32.4(b), an employee who wishes a pre-offset hearing must request the hearing within 15 days of receipt of the written notice given under § 32.3. The Secretary waives the 15-days requirement if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice and lack of knowledge of the time limit.

(b) An employee who has requested a waiver under § 32.4(b) may request a hearing within 5 days of receipt of a determination by the Secretary denying a waiver.

(c) The request for a hearing must—

(1) Be in writing;

(2) State why the employee—

(i) Contests the existence or amount of the overpayment; or

(ii) Claims that the involuntary repayment schedule will cause extreme financial hardship;

(3) Include all documents on which the employee is relying, other than those provided by the Secretary under § 32.3; any document which is a statement of an individual must be in the form of an affidavit; and

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary—

(1) Notifies the employee whether the employee may elect an oral hearing; and

(2) Provides the hearing official with a copy of all records on which the determination of the overpayment and any involuntary repayment schedule are based.

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 5 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) Where an employee requests an oral hearing, the hearing official notifies the Secretary and the employee of the date, time, and location of the hearing. However—

(1) The employee subsequently may elect to have the hearing based only on the written submissions by notifying the hearing official and the Secretary at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-days requirement for good cause when the employee notifies the hearing official before the date of the hearing; and

(2) The request for a hearing of an employee who fails to appear at the oral hearing must be dismissed and the Secretary's decision affirmed.

(U.S.C 5514)

**§ 32.7 Pre-offset oral hearing.**

(a) Oral hearings are informal in nature. The Secretary and the employee, through their representatives, and by reference to the documentation submitted, explain their case. These presentations are in the form of an oral argument. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person whose representation creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing where to do so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call—

(1) When the employee is located in a city other than Washington, D.C.;

(2) At the request of the employee; or

(3) At the discretion of the hearing official.

(5 U.S.C. 5514)

**§ 32.8 Pre-offset hearing on the written submissions.**

If a hearing is to be held on the written submissions, the hearing examiner reviews the records and responses submitted by the Secretary and the employee under § 32.6.

(5 U.S.C. 5514)

**§ 32.9 Written decision.**

(a) The hearing official issues a written decision stating the facts supporting the nature and origin of the

debt and the hearing official's analysis, findings and conclusions as to the amount of the debt and the repayment schedule within 60 days of filing of the employee's request for a pre-offset hearing.

(b) The hearing official decides whether the Secretary's determination of the existence and the amount of the overpayment or the extreme financial hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing official, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.

(c) In making the decision, the hearing official is governed by applicable Federal statutes, rules and regulations.

(d) The hearing official decides the issue of extreme financial hardship caused by the involuntary repayment schedule only where the employee has submitted the financial statement and response required under § 32.4(c). Where the hearing official determines that an involuntary repayment schedule creates extreme financial hardship, he or she must establish a schedule that alleviates the financial hardship but may not reduce the involuntary repayment schedule to a deduction of zero percent.

(5 U.S.C. 5514)

**§ 32.10 Deductions process.**

(a) Debts must be collected in one lump sum where possible. If the employee does not agree to a lump sum that exceeds 15 percent of disposable pay, the debt must be collected in installment deductions at officially established pay intervals in the amount established under a voluntary repayment agreement, an involuntary repayment schedule where no hearing is requested, or the schedule established under the written hearing decision. Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (c) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than $25 may be accepted only in the most unusual circumstances.

(b) Deductions must begin—

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under § 32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under § 32.5, after a written decision.

(c) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment or lump-sum leave) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate.

(d) Interest, penalties and administrative costs on debts collected under this Part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(e) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this Part may not be construed as a waiver of any rights which the employee may have under this Part or any other provision of law, except as otherwise provided by law.

(f) Amounts paid or deducted pursuant to this Part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to refund must be promptly refunded to the employee.

(5 U.S.C. 5514)

[FR Doc. 84-23984 Filed 9-10-84; 8:45 am]
BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-10-FRL-2668-1]

### Federal Assistance Limitations; State of Oregon

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to limit certain federal funding assistance for Jackson County, Oregon. These limitations will apply to funds provided under the Clean Air Act, the Clean Water Act, and the Surface Transportation Assistance Act. EPA is taking this action pursuant to sections 176(a) and 316(b) of the Clean Air Act, because the State of Oregon failed to submit legally enforceable State Implementation Plan (SIP) revisions that would provide for attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide prior to December 31, 1987. If EPA takes final action, the funding limitations would apply to all of Jackson County.

**DATE:** Comments must be received on or before October 11, 1984.

**ADDRESS:** Comments should be addressed to: Laurie Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** Loren McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, (FTS) 399-7369.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On June 24, 1980 (45 FR 42278) EPA approved the first phase of the Medford Carbon Monoxide (CO) attainment plan. At that time an extension of the attainment date for the CO standard to a date beyond December 31, 1982, but before December 31, 1987, was also approved.

The second phase of the Medford CO Attainment Plan was submitted to EPA on October 20, 1982. That plan indicated that, in order to attain the CO standard by December 31, 1987, it would be necessary to implement an automobile inspection and maintenance (I/M) program prior to January 1984. On February 3, 1983 (48 FR 5131) EPA proposed to approve this second phase with the understanding that EPA would not finally approve the SIP until after I/M is officially adopted and resource commitments are obtained. Since that time, the responsible Jackson County officials have abandoned the original schedules and commitments for implementation of an I/M program in Medford.

Accordingly, on March 14, 1984 (49 FR 9582) EPA reversed its original proposal and proposed to disapprove the plan. On March 27, 1984 the residents in Jackson County, Oregon, voted against the establishment of an I/M program. Clearly the current CO attainment plan does not provide for attainment of the standards prior to December 31, 1987. EPA had no choice, according to the requirements of section 172(b)(10) of the Clean Air Act, but to finalize the disapproval and initiate the section 176(a) and 316(b) sanction process.

#### II. Funding Limitations

*A. Section 176(a)*

To ensure that Federal funds do not further contribute to the already serious air pollution problem and to encourage

state cooperation, Congress adopted section 176(a) of the Clean Air Act. Section 176(a) requires withholding of certain federal assistance funds for highway construction and air quality planning grants if the EPA Administrator finds that a state has failed to submit, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172 of the Act. This includes the requirement for I/M. On April 10, 1980, after prior notice and public comment, EPA and the Department of Transportation (DOT) published their final policies and procedures for imposing funding restrictions under section 176(a). (45 FR 24692.) This notice should be used as reference in reviewing today's notice.

*B. Section 316(b)*

EPA may also withold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act. The EPA Regional Administrator may fund a specific project if she finds that it is needed for relief of an immediate public health hazard and will not expand usable treatment capacity by more than one million gallons per day. In addition, the EPA Regional Administrator may fund a project which will improve treatment capability, but will not expand capacity for future growth.

These sewage treatment funding limitations would apply to all of Jackson County and could impact over one million dollars in grant awards. The EPA policy for implementing section 316(b) was published in the **Federal Register** on August 11, 1980 (45 FR 53382).

**III. Consultation Period**

On April 18, 1984, EPA notified affected federal, state and local agencies and officials that it was initiating the EPA/DOT procedures for imposing the funding limitations under section 176(a). This notification started a 30-day consultation period in accordance with these procedures. Between April 18, 1984 and the date of this notice, EPA officials have consulted with several federal, state and local officials in an effort to resolve this issue. The following events have occurred since EPA initiated this consultation period:

*April 18, 1984*

EPA notified Federal Highway Administration (FHWA) by telephone and letter that the 30-day consultation period was being initiated. Key state, local and congressional contacts were informed of the action.

*April 20, 1984*

EPA discussed alternatives to I/M and other possible ways to implement I/M with staff of Oregon Department of Environmental Quality (ODEQ).

*April 24, 1984*

EPA met with FHWA to discuss the SIP status and sanction action.

*April 27, 1984*

Joe Cannon, Assistant Administrator for Office of Air and Radiation met with Oregon Congressman Bob Smith and the President of the Medford Chamber of Commerce to discuss sanctions.

*May 8, 1984*

EPA met with FHWA to develop regional criteria and procedures for implementing the section 176(a) sanction process. EPA also met with ODEQ to discuss the current SIP status and ongoing efforts to resolve the CO problem in Medford.

*May 18, 1984*

The consultation process with FHWA officially closed. Discussions continue on solutions to the CO problem.

**IV. Proposed Action**

Failure of the Jackson County Commissioners to adopt an I/M program has prevented ODEQ from submitting an approvable 1982 SIP for attainment of the NAAQS for CO. EPA therefore proposes the following actions:

1. EPA proposes to find that the State of Oregon has failed to submit, and is not making reasonable efforts to submit, an approvable 1982 SIP for Medford, Oregon which considers each of the elements required by section 172 and 110 of the Act; and

2. EPA proposes to impose federal funding restrictions on Jackson County, Oregon, pursuant to section 176(a) and 316(b) of the Act.

During the public comment period, EPA will consider any comments on this issue. If, prior to final EPA action on this matter, the Jackson County Commissioners or ODEQ adopts an enforceable I/M program or other program which demonstrates attainment of the CO standard prior to the December 31, 1987 deadline, EPA will withdraw this proposal. If the County and State fail to remedy this situation before EPA takes final action, the funding limitations will become effective on the date final rulemaking is published in the **Federal Register**.

Upon final rulemaking, the Secretary of Transportation shall not approve any projects or award any grants under the Transportation Assistance Act in Jackson County, except for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance. Furthermore, the Administrator of EPA shall not approve any projects or award any grants in Jackson County authorized by the Clean Air Act unless they qualify for the exemptions noted in the April 10, 1980 policy notice. Pursuant to section 316 of the Act, EPA will also withhold certain grants for the construction of sewage treatment works available under section 201(g) of the Clean Water Act (33 U.S.C. 1251 et. seq.). Once these funding limitations are finalized they can only be removed by a **Federal Register** notice, after ODEQ officially submits a SIP to EPA which corrects the deficiency identified in today's notice and EPA takes final action to approve it.

For more information on the scope and procedures for these restrictions, see 45 FR 53382 (August 11, 1980), and 45 FR 24692 (April 10, 1980).

**V. Opportunity for Public Hearing**

EPA Region 10 today is also announcing an opportunity for a public hearing before air planning grants are revoked for the Jackson County Area. If a hearing is required, it will be held as indicated below:

Date: October 26, 1984.
Time: 7:00 p.m.
Address: Conference Room 1400, 522 S.W. Fifth (Yeon Building), Portland, Oregon 97204.
For Further Information Contact: Michael Gearheard, U.S. Environmental Protection Agency, 552 S.W. Fifth Avenue, Yeon Building, 2nd Floor, Portland, Oregon 97204, Telephone (503) 221-3250.

This public hearing will be held if (and only if) a request for a public hearing is received at the office listed above by October 11, 1984. It is suggested that anyone wishing to verify whether the public hearing is to be held should call the above listed office.

**VI. Request for Comments**

Interested parties are invited to comment on all aspects of these proposed actions regarding the Oregon SIP. EPA will consider all comments received within 30-days of the publication of this notice. The comment deadline is October 11, 1984.

**VII. Regulatory Impact**

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the Agency must prepare a regulatory flexibility analysis assessing the impact of any proposal or final rule on the small entities. Under 5 U.S.C. 605(b), this requirement may be waived if the Agency certifies that the rule will not have a significant economic effect on a substantial number of small

entities. Small entities include small business, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000.

If EPA takes final action to find that the State of Oregon is not making reasonable efforts to submit an approvable SIP for Medford, certain highway construction funds, air quality planning funds, and sewage treatment grants for Jackson County will be withheld. Thus some small entities may be affected by final EPA action.

EPA can not reliably predict the impacts of the Clean Air Act restrictions under section 176(a), because of the exemptions authorized for highway safety and air quality planning projects. Careful review and evaluation of each highway and sewage treatment project is necessary to determine whether or not a project is exempt. Consequently, EPA is making no quantified assessment of the potential economic impact on small entities that may result from today's proposal.

Furthermore, although EPA believes that a final action might have some impact on small entities, this impact cannot affect the Agency's actions. Under the Clean Air Act, the imposition of the funding restrictions in section 176(a) are automatic and mandatory whenever the Agency determines that a State has not submitted, or is not making reasonable efforts to submit, a SIP which considers each of the elements of section 172.

Similarly, EPA can not reliably predict the impacts of the Clean Water Act restrictions under section 316(b), because growth projections specifically related to impacted projects are not available.

Under Executive Order 12291, EPA must judge whether a regulation is major and, therefore, subject to the requirement of a Regulatory Impact Analysis. If this action is finalized, section 176(a) limitations will impact $65,000 to $150,000 of the Oregon State air grant per year and up to $20 million in highway funds. The section 316(b) sewage treatment grant restrictions could impact another $1 million. Clearly today's action is not major since it will not have an economic impact exceeding $100 million per year. Under Executive Order 12291, today's action is not "Major." It has been submitted to the Office of Management and Budget for review.

**Authority:** Secs. 110, 172, 176(a), 301 and 316 of the Clean Air Act, as amended; (42 U.S.C. 7410, 7502, 7506(a), 7601 and 7616).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbon, Intergovernmental relations.

Dated: June 8, 1984.

**Ernesta B. Barnes,**

*Regional Administrator.*

[FR Doc. 84-23923 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[Docket No. 21323; RM-2836]**

### Use of Subcarrier Frequencies in the Aural Baseband of Television Transmitters; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** Action corrects an error in the text of the *Second Further Notice of Proposed Rule Making* in Docket No. 21323. That *Further Notice* asked for comment and information on the issue of whether to require cable television systems to carry program-related aural subcarrier signals of broadcast television stations.

**FOR FURTHER INFORMATION CONTACT:** Alan Stillwell, Mass Media Bureau (202) 632-6302.

**SUPPLEMENTARY INFORMATION:**

**Erratum**

In the matter of the use of subcarrier frequencies in the aural baseband of television transmitters; Docket No. 21323, RM-2836.

Released: August 20, 1984.

1. On August 13, 1984, the Commission released a *Second Further Notice of Proposed Rule Making* (FCC 84-361) in the above captioned matter. In FR Doc. 84-21672, in the issue of Wednesday, August 15, 1984, beginning on page 32619, text was inadvertently omitted from the document. On page 32622, in the second column, in the first paragraph (4), after the fourth line insert the following:

"13. We invite comments on any aspect of this proposal. In particular, interested parties are invited to suggest threshold levels of "significant capital expenditures" and "material interference or degradation."

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 84-23941 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 74

**[MM Docket No. 83-523]**

### Instructional Television Fixed Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment/reply comment period.

**SUMMARY:** This action grants a request for extension of time for filing comments in response to the *Further Notice of Proposed Rulemaking* in MM Docket No. 83-523 (Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service). The National Association of State Universities and Land-Grant Colleges requested an extension of one month. The Media Access Project supported the request. The *Order* explains that colleges and universities, who represent a large class of ITFS licensees, need more time to prepare comments on the comprehensive matters raised in the *Further Notice* because they are currently preoccupied with starting a new school year.

**DATES:** Comments are now due by October 17, 1984 and replies by November 2, 1984.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554

**FOR FURTHER INFORMATION CONTACT:** Joel M. Margolis, Mass Media Bureau, (202) 632-6495.

**Order Extending Time for Filing Comments and Reply Comments**

In the matter of Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service; MM Docket No. 83-523.

Adopted: August 30, 1984.

Released: September 4, 1984.

By the Chief, Mass Media Bureau.

1. On July 26, 1984, a *Further Notice of Proposed Rulemaking* was adopted in the above-captioned proceeding, 49 FR 32610 (published August 15, 1984). The *Further Notice* provided that comments

be filed by September 17, 1984, and that reply comments be filed by October 2, 1984.

2. A request for an extension of these filing deadlines was filed by the National Association of State Universites and Land-Grant Colleges ("NASULGC") by letter of August 21, 1984. Comments in support of the request were filed by the Media Access Project ("MAP") on August 22, 1984. NASULGC requests that the comment date in the above-captioned proceeding be extended to October 17, 1984.

3. In support of NASULGC's request, both it and MAP contend that the present one-month comment period is not sufficient to respond to the serious, detailed and complex issues raised by the *Further Notice*. They point out that since the comment period falls on the "most hectic period" of the school year, many colleges and universities will not have enough time to prepare the materials they believe are necessary to incorporate in their comments. They claim that some of the data they hope to provide was notably lacking from prior Commission decisions concerning the Instructional Television Fixed Service.

4. We agree that the instant proceeding raises very fundamental issues in the Instructional Television Fixed Service, calling for detailed and comprehensive comments in a number of areas. We do not want to constrain colleges and universities, who comprise a large class of ITFS licensees, from supplying their much needed contribution to the rulemaking proceeding by requiring them to respond during the busiest time of the school year. An extension of one month, under the circumstances, appears appropriate. The parties did not request an extension of the reply comment deadline. We will therefore specify a reasonable date.

5. Accordingly, it is ordered that, the dates for filing comments and reply comments in the above-captioned proceeding are extended to and including October 17, 1984, and November 2, 1984, respectively. It is further ordered that, the request for extension of time filed by the National Association of State Universities and Land-Grant Colleges is granted. This action is taken by authority delegated by Section 0.283 of the Commission's Rules, 47 CFR 0.283.

Federal Communications Commission.

James C. McKinney,

*Chief, Mass Media Bureau.*

[FR Doc. 84-23949 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status and Critical Habitat for the Bay Checkerspot Butterfly (Euphydryas Editha Bayensis)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to list the bay checkerspot butterfly as an endangered species. Historically known from the San Francisco Peninsula and outer Coast Range to the south and east of the peninsula, the bay checkerspot butterfly has suffered a tremendous reduction in number and range. Of the 16 known colonies, 11 colonies have been extirpated. Only five colonies remain and two of these are threatened with imminent loss, if they are not already gone. Critical habitat in San Mateo and Santa Clara Counties, California, is included with this proposed rule. The proposed rule would provide protection to remaining wild populations of this subspecies. The Service seeks data and comments from the public on this proposal. The Service is requesting information on environmental and economic impacts and effects upon small business entities that would result from designating critical habitat for the bay checkerspot butterfly.

**DATES:** Comments from all interested parties must be received by November 13, 1984. Public hearing requests must be received by October 26, 1984.

**ADDRESS:** Comments and materials concerning this proposal should be sent to Mr. Sanford Wilbur, Endangered Species Coordinator, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sanford Wilbur, Endangered Species Coordinator, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, OR 97232 (503/231-6131); or Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, Washington, D.C. 20240, (703/235-2771).

**SUPPLEMENTARY INFORMATION:**

### Background

Since 1960, the bay checkerspot butterfly (*Euphydryas editha bayensis*) has been the subject of extensive research by Dr. Paul R. Ehrlich and his associates at Stanford University. The presence of 16 populations or colonies of this butterfly on the San Francisco Peninsula as well as on the inner Coast Range to the south and east of the San Francisco Peninsula has been documented (Ehrlich and Murphy 1981, Murphy and Ehrlich 1980). The presence of additional colonies is indicated by museum records, but they were destroyed before the exact location of their habitat became known. The bay checkerspot butterfly is restricted to grassland areas on shallow Montara or other serpentine soils that support the butterfly's larval foodplants (Ehrlich *et al.* 1975). The annual plantain (*Plantago erecta*) is the primary larval foodplant and a hemiparasitic annual (*Orthocarpus densiflorus*) is the obligatory secondary larval foodplant (Singer 1971).

Of the 16 known colonies, 11 have been extirpated, two others are near extinction or possibly already extinct, and the remaining colonies face the likelihood of extinction. Colonies have been eliminated in the course of freeway construction (Hillsborough and San Mateo colonies and part of the Edgewood colony), subdivision construction and the introduction of exotic plants (Twin Peaks, Mt. Davidson, Brisbane, Joaquin Miller and San Leandro colonies), and overgrazing by livestock coupled with drought (Morgan Territory Road, Silver Creek, Coyote Reservoir and Uvas colonies) (Murphy and Ehrlich 1980). Four of the five remaining populations, San Bruno Mountain, Woodside, Jasper Ridge and Edgewood colonies, occur in San Mateo County. Because the San Bruno Mountain colony fluctuates greatly in numbers, it may be near extinction. The Woodside colony is also near extinction, if not already extinct, as no bay checkerspot butterflies were seen there during 1982. The largest and relatively most secure colony, Morgan Hill, occurs in Santa Clara County.

Most of the habitat of the Woodside Colony has recently been eliminated by condominium development, thereby greatly reducting the viability of this colony. The Jasper Ridge colony, consisting of two demographic units, is located on a biological preserve of Stanford University and although small, does not appear to face imminent extinction. One of two large colonies is located at Edgewood County Park and

may be threatened by proposed construction of a golf course and other recreational facilities. The other, at Morgan Hill, is threatened by overgrazing and by a proposed sanitary landfill. Historically, several smaller populations apparently underwent natural extinction and subsequent recolonization from nearby colonies (Ehrlich 1965, Ehrlich *et al.* 1975). Therefore, for this butterfly to maintain itself in nature, preservation of several colonies in close proximity to each other may be necessary in order for dispersal and recolonization to proceed. Preservation of the two larger colonies, Edgewood and Morgan Hill, also appears necessary to insure that natural climatic fluctuations do not eliminate the depleted species.

On October 21, 1980, the Service was petitioned by Dr. Bruce O. Wilcox, Mr. Dennis D. Murphy, and Dr. Paul R. Ehrlich to list the bay checkerspot butterfly as an endangered species. The petition was supplemented by Dr. Wilcox and Mr. Murphy with a letter and other materials received on December 11, 1980. The Service included this taxon in a **Federal Register** Notice of Review on February 13, 1981 (46 FR 43709). A review of the status of the bay checkerspot was made to determine if it should be added to the U.S. List of Endangered and Threatened Wildlife. On October 13, 1983, the Service found this proposed listing to be warranted but precluded by other pending listing actions, and reported this finding in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires that a new one-year petition action deadline be established, pursuant to Section 4(b)(3)(C)(i) of the Endangered Species Act, as amended. This proposed rule reaffirms the finding that the petitioned action is warranted, and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; see proposed revisions to accommodate 1982 amendments in the **Federal Register** of August 8, 1983) set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the bay checkerspot butterfly (*Euphydryas editha bayensis*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Only five of the sixteen known populations of the bay checkerspot butterfly are still extant and two of the five are near extinction. The construction of Interstate Highway 280 during 1970 eliminated colonies at Hillsborough and San Mateo, and bisected the Edgewood colony. Habitat alteration over the past decade or longer, primarily the result of subdivision construction and introduction of non-native plants, has resulted in the disappearance of colonies at Twin Peaks, Mt. Davidson, Brisbane, Joaquin Miller, and San Leandro. Drought in 1977 dealt a final blow to colonies at Morgan Territory Road, Silver Creek, Coyote Reservoir and Uvas Valley, where the habitat had been subjected to years of overgrazing by livestock.

One of the remaining populations, the Woodside colony, is close to extinction. Its population numbers have dropped from approximately 10,000 in 1979 to below 100 in 1982, after construction of a condominium complex removed all but one acre of the butterfly's habitat (D. Murphy, pers. comm.). No butterflies were observed at this site during 1983. The San Bruno Mountain colony, another of the remaining populations, is not secure because it is prone to large population fluctuations that occasionally bring it to the brink of extinction (D. Murphy, pers. comm.; Murphy and Ehrlich 1980). The Edgewood, Jasper Ridge, and Morgan Hill colonies are the only three remaining populations of the bay checkerspot butterfly that appear to be viable. However, the Edgewood colony is presently threatened with the construction of a golf course and other recreational facilities on San Mateo Regional Park District land. The Jasper Ridge colony is protected as a biological preserve, but is small enough to be susceptible to large fluctuations in population size. The Morgan Hill colony is the largest and relatively the most secure, but portions of this colony are threatened by overgrazing and a proposed sanitary fill.

*B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes*

Although specimens of the bay checkerspot butterfly are valuable to collectors, overcollecting has not been identified as a threat to any colony. To discourage unnecessary collecting, Stanford University offers old specimens from its museum on an exchange basis.

*C. Disease or Predation.*

Ninety to ninety-nine percent of the bay checkerspot butterfly larvae die of starvation while in prediapause instars. Three to twenty-four percent of the remaining postdiapause larvae at the Jasper Ridge Colony are killed by three species of parasitoids (Ehrlich *et al.* 1975). Because of high prediapause mortality and because the greatest parasitism only occurs during years of high butterfly numbers, the high rate of parasitism is not a major factor in determining the size of any bay checkerspot butterfly population. In years of large butterfly numbers, the majority of the butterflies still escape parasitism and provide recruitment in subsequent years.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The bay checkerspot butterfly is not given protection under any State or local regulations. Federal listing of this butterfly would provide protection to wild populations.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Habitat damage can reduce the size of a colony to a level at which natural climatic changes lead to extinction. The drought of 1976 and 1977 in association with overgrazing caused the disappearance of four colonies of the bay checkerspot butterfly (Murphy and Ehrlich 1980), and greatly reduced the Jasper Ridge population (Ehrlich *et al.* 1980) This drought also caused the extinction of some populations of another subspecies of *Euphydryas editha* (Ehrlich et al. 1980). It seems likely that a particularly severe or prolonged drought would be detrimental to most of the remaining colonies.

The bay checkerspot butterfly occurs on grasslands of Montara or other serpentine soils that are often surrounded by chaparral vegetation. Two of these disjunct colonies are small enough to be subject to periodic natural extinctions and subsequent recolonization by butterflies from a nearby colony. As habitat is lost and the number of colonies decreases, the distances among colonies become greater and the chance of recolonization becomes less.

**Critical Habitat**

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by a species,

at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in Section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat for the bay checkerspot butterfly is proposed to include approximately 1,620 acres in San Mateo County and 6,678 acres in Santa Clara County, California. The proposed critical habitat area encompasses approximately 200 acres along the eastern one-half of San Bruno Mountain including portions of the County Park, upper slopes of Owl Canyon, and upper management units surrounding the Guadalupe Valley Quarry excavation area (County of San Mateo, 1982); approximately 600 acres in Edgewood County Park and adjacent State Fish and Game Refuge; approximately 60 acres along the Redwood City and Woodside City limits; approximately 760 acres in the Jasper Ridge Biological Preserve; and 6,678 acres in the Morgan Hill area. The area proposed does not include the entire historic habitat of this butterfly and modifications to critical habitat descriptions may be proposed in the future.

Section 4(b)(8) of the Act requires, for any proposed rule that includes critical habitat, a brief description and evaluation of those public or private activities which may adversely modify such habitat if undertaken or which may be affected by such designation. Such activities are identified for this subspecies as follows:

1. Grazing of livestock, which could destroy larval or adult food sources.
2. Introduction of exotic plants that might compete with larval or adult food sources.
3. Application of herbicides or insecticides.
4. Any other activity causing damage or removal of native vegetation.

Three activities involving Federal agencies are presently known that may have an impact on the habitat of the bay checkerspot butterfly. These three activities include the proposed golf course and recreational facilities at Edgewood Park, the habitat conservation plan for San Bruno Mountain and the proposed sanitary landfill at Morgan Hill. At Edgewood Park, the National Park Service maintains an easement and it may therefore be necessary to obtain Park Service permission prior to construction of new recreational facilities. Construction of the golf course could seriously jeopardize the Edgewood Colony by destroying significant habitat areas. The San Bruno Mountain Colony would undergo few direct effects as a result of residential development of the mountain, as addressed in the San Bruno Mountain Area Habitat Conservation Plan (County of San Mateo, 1982), because the colony is on county parkland that is designated as conserved habitat in the Plan and therefore is not scheduled for development. The habitat conservation plan requires the county to maintain the area utilized by the bay checkerspot butterfly on San Bruno Mountain as open-space with only limited development for hiking trails and vista points. At Morgan Hill, the Environmental Protection Agency must approve plans for development of the sanitary landfill.

The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designation at the time of the final rule, after considering all additional information obtained.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required by Federal agencies and taking and harm prohibitions are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If an action may affect a listed species, the Federal agency must enter into consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. With respect to the bay checkerspot butterfly all the prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Services and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species or for incidental take. The permit issued to the County of San Mateo and the cities of South San Francisco, Brisbane and Daly City under Section 10(a) for incidental take of three endangered butterfly species does not cover the Bay checkerspot. As a result, listing of the Bay checkerspot may require issuance of a new or amended Section 10(a) permit. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

### Public Comments Solicited

The Service intends that any final rule adopted will be as accurate and as effective as possible in the conservation

of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or the lack thereof) to the by checkerspot butterfly;

(2) The location of any additional populations of the bay checkerspot butterfly and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject areas and their possible impacts on the bay checkerspot butterfly; and

(5) Any foreseeable economic and other impacts resulting from the designation of critical habitat.

Final promulgation of the regulations on the bay checkerspot butterfly will take into consideration the comments and any additional information received by the service, and such communication may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests should be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References

County of San Mateo. 1982. San Bruno Mountain area habitat conservation plan. Two volumes, 409 pp.

Ehrlich, P.R. 1965. The population of the butterfly *Euphydryas editha*. The structure of the Jasper Ridge Colony. Evolution 19:327–336.

Ehrlich, P.R. and D.D. Murphy. 1981. The population biology of checkerspot butterflies (*Euphydryas*). Biol. Zentral 100:613–629.

Ehrlich, P.R., R.R. White, M.C. Singer, S.W. McKechnie and L.E. Gilbert. 1975. Checkerspot butterflies: a historical perspective. Science 188:221–228.

Ehrlich, P.R., D.D. Murphy, M.C. Singer, C.B. Sherwood, R.R. White and I.L. Brown. 1980. Extinction, reduction, stability and increase: the response of checkerspot butterfly (*Euphydryas*) populations to the California drought. Oecologia 46:101–105.

Murphy, D.D. and P.R. Enrlich. 1980. Two California checkerspot butterfly subspecies: one new, one on the verge of extinction. J. Lepidopterists' Soc. 34:316–320.

### Author

The primary author of this proposed rule is Dr. Jack E. Williams, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814. Dr. George E. Drewry of the Service's Washington Office of Endangered Species served as editor.

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Proposed Regulations Promulgation

## PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend Section 17.11(h) by adding the following in alphabetical order under Insects to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| **Insects** | | | | | | | |
| Butterfly, bay checkerspot | Euphydryas editha bayensis | U.S.A. (CA) | NA | E | 17.95(i) | NA | |

3. It is further proposed to amend § 17.95(i) by adding critical habitat of the bay checkerspot butterfly as follows: The position of this and any following critical habitat entries under § 17.95(i) will be determined at the time of publication of a final rule.

**§ 17.95 Critical habitat—fish and wildlife**

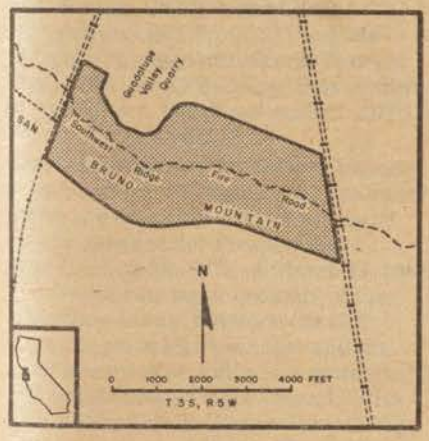
(i) Insects

* * * * *

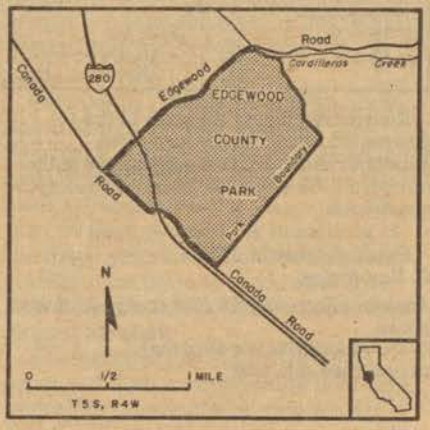
**Bay Checkerspot Butterfly**

*(Euphydryas editha bayensis) California, San Mateo County*

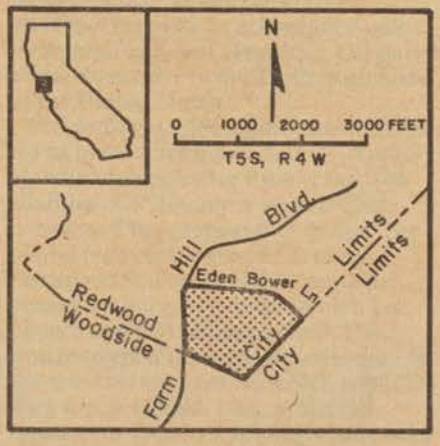
1. San Bruno Mountain Zone—approximately 200 acres in T3S, R5W. Designated area consists of a strip 1,000 ft wide on each side of the Southwest Ridge Fire Road, as measured from the center of said road; limited on the east and west, respectively, by eastern and western transmission line corridors of Pacific Gas and Electric Company; but excluding the existing excavation area of Guadalupe Valley Quarry.



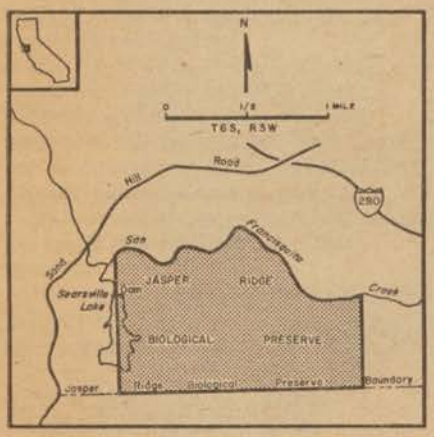

2. Edgewood Park Zone—approximately 600 acres of T5S, R4W and bounded as follows: beginning at the intersection of Canada Road and Edgewood Road; thence continuing northeasterly, following Edgewood Road, to Edgewood County Park boundary at Cordilleras Creek; thence continuing southeasterly and southwesterly, following said Park boundary, to its intersection with Canada Road; thence continuing northwesterly, following Canada Road, to the point of origin.




3. Woodside Zone—approximately 60 acres in T5S, R4W, bounded as follows: on the West by Farm Hill Boulevard, on the north and northeast by Eden Bower Lane, and on the southeast and southwest by the boundary between city limits of Woodside and Redwood City.

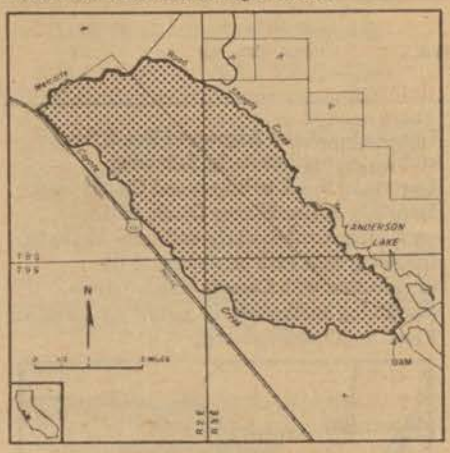


4. Jasper Ridge Zone—approximately 760 acres in T6S, R3W, within the Jasper Ridge Biological Preserve; bounded on the north by San Francisquito Creek, on the west by a north-south line bisecting the spillway of the Searsville Lake Dam at San Francisquito Creek, on the south by the Jasper Ridge Biological Preserve boundary, and on the east by a line parallel to and 1.5 miles east of the west boundary.




*California, Santa Clara County*

5. Morgan Hill Zone—approximately 6,678 acres in T9S, R3E; T8S, R3E; T9S, R2E; and T8S, R2E; bounded as follows: on the north by Metcalfe Road, on the west and south by Coyote Creek, and on the northeast by Anderson Lake and Shingle Creek.




Known constituent elements of the designated areas include serpentine grassland with adequate populations of the foodplants *Plantago erecta* and *Orthocarpus densiflorus*.

* * * * *

Dated: August 14, 1984.

**G. Ray Arnett,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 84-23989 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register
Vol. 49, No. 177
Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Determinaton of the Market Stabilization Price for Sugar for Fiscal Year 1985

**AGENCY:** Office of the Secretary, USDA.
**ACTION:** Notice.

**SUMMARY:** This notice sets forth the market stabilization price for sugar for the period October 1, 1984–September 30, 1985. The market stabilization price was announced as 21.57 cents per pound on August 31, 1984 by the Secretary of Agriculture.

**FOR FURTHER INFORMATION CONTACT:** John Nuttall, Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Room 6603, South Building, Department of Agriculture, Washington, D.C. 20250, Telephone: (202) 447–2916.

**SUPPLEMENTARY INFORMATION:** Imports of raw and refined sugar into the United States are currently subject to import fees imposed under Presidential Proclamation No. 5164 of March 19, 1984. The fee for raw sugar consists of the difference, if any, between the U.S. domestic price for raw sugar and the minimum price at which it is more likely that sugar pledged as collateral to the Commodity Credit Corporation (CCC) for a price support loan will be sold into the market than forfeited to CCC. This latter price is called the market stabilization price. The market stabilization price is the sum of: (1) The price support level for the applicable fiscal year, expressed in cents per pound of raw cane sugar; (2) adjusted average transportation costs; (3) interest costs, if applicable; and (4) 0.2 cents. The adjusted average transportation costs are the weighted average costs of handling and transporting domestically produced raw cane sugar from Hawaii to Gulf and Atlantic Coast ports, as determined by the Secretary. Interest costs is the amount of interest, as determined or estimated by the Secretary, that would be required to be paid by a recipient of a price support loan for raw cane sugar upon repayment of the loan at full maturity. Interest costs are only applicable if a price support loan recipient is not required to pay interest upon forfeiture of the loan collateral. Under the sugar price support program, a loan recipient is not required to pay interest upon forfeiture of the loan collateral.

Presidential Proclamation No. 5164 dated March 19, 1984 requires the Secretary of Agriculture to announce the market stabilization price applicable to each subsequent fiscal year not later than 30 days prior to the beginning of the fiscal year for which such market stabflization price is applicable. The Secretary made this announcement on August 31, 1984.

The Secretary of Agriculture has proposed that the applicable loan rate under the price support program for sugar, expressed in cents per pound for raw cane sugar, should be 17.75 cents per pound for loans disbursed during the period October 1, 1984–September 30, 1985. (49 FR 32244.) If the actual loan rate determined by the Secretary differs from 17.75 cents per pound, the Secretary may adjust the market stabilization price in accordance with paragraph (c)(iv) of Headnote 4 of part 3 of the Appendix to the Tariff Schedules of the United States.

Accordingly, after appropriate review, it has been determined that the market stabilization price for fiscal year 1985 shall be 21.57 cents per pound. This consists of the proposed 17.75 cent per pound loan rate; adjusted average transportation costs of 2.68 cents per pound; an interest cost of .94 cent per pound; and 0.2 cent per pound. The transportation factor represents data for the most recent year for which complete data are available, 1983, projected forward to 1985 by applying a projected increase in the Producer Price index for finished goods over this time. The interest factor is based on an estimated average interest of 10.625 percent over the year, and a six month loan maturity period.

Notice is hereby given that in conformity with the provisions of paragraph (c) of Headnote 4 of part 3 of the Appendix of the Tariff Schedules of the United States, the market stabilization price for sugar for fiscal year 1985 has been determined to be 21.57 cents per pound.

Signed at Washington, D.C. on August 31, 1984.

**Richard E. Lyng,**
*Acting Secretary of Agriculture.*

[FR Doc. 84–23911 Filed 9–6–84; 11:55 am]
BILLING CODE 3410–10–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket No. 39–84]**

### Foreign-Trade Zone 84—Harris County, TX (Houston Customs Port of Entry); Application To Amend Zone Plan

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority (PHA), grantee of Foreign-Trade Zone 84, requesting authority to amend the plan for Foreign-Trade Zone 84 in Harris County, Texas, within the Houston Customs port of entry, by replacing 8 of the originally approved sites with 10 new ones. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 29, 1984. The applicant is authorized to make this proposal under Article 1446.7 of Vernon's Annotated Civil Statutes.

The PHA received authority from the Board to establish a multi-site foreign-trade zone in Harris County, Texas on July 15, 1983 (Board Order 214, 48 FR 34792, 8/1/83). While 5 PHA sites were approved as conventional sites, the remaining sites were approved for 5 years subject to special conditions. The new sites in this application are non-PHA sites and would also be subject to these conditions.

The proposed ten new sites total 221 acres, replacing the 8 deleted sites which total 253 acres. The sites to be added involve 6 privately owned warehouse/distribution operations, and 4 manufacturing operations. The manufacturing sites are for Cleanese Chemical Company for the storage and blending of organic chemicals; Vetco Offshore, Inc., manufacturing oil and gas

drillings equipment from steel tubular products and connectors; Landell Manufacturing, Inc., manufacturing steel pipe couplings for the petroleum industry; and United Steel Machinery Corporation, a steel service center levelling and cutting sheet and plate.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consist of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald Gough, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southwest Region, Suite 500, 5850 San Felipe St., Houston, TX 77057; and Colonel Alan L. Laubscher, District Engineer, U.S. Army Engineer District Galveston, P.O. Box 1229, Galveston, TX 77553.

Comments concerning the proposed zone amendment are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 9, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 2625 Federal Bldg., 515 Rusk St., Houston, TX 77002

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, D.C. 20230.

Dated: September 5, 1984.

**John J. Da Ponte, Jr.,**

*Executive Secretary, Foreign-Trade Zones Board.*

[FR Doc. 84-23942 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-25-M

## International Trade Administration

## Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held September 25, 1984, 1:00 p.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of:
   a. Distribution license rule.
   b. Automated processing system.
   c. Guidelines for licensing officers.
   d. Public rule-making recommendations.
4. Discussion of documentation to expedite cases to COCOM.
5. Report on cost benefit study.
6. Discussion with Department of Energy representatives.
7. 1985 Plan.
8. Action items underway.
9. Action items due at next meeting.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: September 5, 1984.

**Milton M. Baltas,**

*Director of Technical Programs Office of Export Administration.*

[FR Doc. 84-23882 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DT-M

## International Trade Administration, Import Administration

[C-201-402]

## Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lime From Mexico

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Mexico of lime and are thus instituting a countervailing duty order. The net bounty or grant for each firm is listed in the "Suspension of Liquidation" section of this notice. The net bounty or grant on the products under investigation produced by Mexicana de Cobre, Productos Calizos de Baja California, Incalpa, Cales de Chiapas, Cal de Apasco, Cales de Puebla, and Materiales Titan is *de minimis*. With respect to these companies, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released with respect to imports of the products under investigation from the companies for which we have determined *de minimis* estimated net bounties or grants.

**EFFECTIVE DATE:** September 11, 1984

**FOR FURTHER INFORMATION CONTACT:** Kenneth Haldenstein or Vincent Kane, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-4136 or 5414.

**SUPPLEMENTARY INFORMATION:**

### Final Determination and Order

Based upon our investigation, we determine that certain benefits that constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers or exporters in Mexico of lime as described in the "Scope of Investigations" section of this notice. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Fund for the Promotion of Exports of Mexican Manufactured Products (FOMEX)
- Import Duty Reductions and Exemptions
- Fund for Industrial Development (FONEI)
- Preferential Federal Tax Incentives (CEPROFI)
- Guarantee and Development Fund for Medium and Small Industries (FOGAIN)
- Certain Equity Infusions
- Loans from Mexican Trust for Nonmetallic Minerals
- Delay of Payment of Fuel Charges
- Delay of Payment on Other Loans
- Loans from the Mexican National Bank for Foreign Trade (BANCOMEXT)

We determine the estimated bounty or grant to be the rate specified for each company in the "Suspension of Liquidation" section of this notice. The net bounty or grant on the products under investigation produced by seven companies is *de minimis*. With respect to these companies, the suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released with respect to imports of the products under investigation from the companies for which we have determined *de minimis* estimated net bounties or grants.

### Case History

On March 21, 1984, we received a petition from the Paul Lime Division of

Can-Am Corporation, Chemical Lime Inc., Genstar Lime Company, and the United Cement, Lime, Gypsum and Allied Workers International Union, AFL–CIO/CLC, filed on behalf of the U.S. lime manufacturers. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers or exporters in Mexico of lime receive bounties or grants within the meaning of section 303(a)(1) of the Tariff Act of 1930, as amended (the Act).

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the subject merchandise is nondutiable and there are no "international obligations" within the meaning of section 303(a)(2) of the Act which require an injury determination for nondutiable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten to cause material injury to a U.S. industry.

We presented a questionnaire concerning the allegations to the government of Mexico in Washington, D.C. on April 10, 1984. On May 21 and 29, 1984, we received responses to the questionnaire.

On June 14, 1984, we issued our preliminary determination in this investigation (49 FR 25656, June 22, 1984). We preliminarily determined that benefits constituting bounties or grants within the meaning of the Act are being provided to manufacturers, producers, or exporters in Mexico of lime.

We received a supplemental response from Sonocal on July 13, 1984, and from Mexicana De Cobre on July 25, 1984.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

**Scope of Investigation**

The products covered by this investigation are calcium oxide (CaO), commonly called quicklime or lime, and calcium hydroxide (Ca(OH)2), commonly called hydrated lime or hydrate. Hydrated lime is currently classified under 512.1100 of the *Tariff Schedules of the United States Annotated* (TSUSA) and lime, other than hydrated, is currently classified under TSUSA item number 512.1400.

There are three known manufacturers and exporters in Mexico of lime which export to the United States and eight other producers that have applied for exclusion from this investigation because they received either no benefits or benefits in *de minimus* amounts. We have received information from the government of Mexico regarding Sonocal, S.A., Mexicana de Cobre, S.A., Productos Calizos de Baja California, S.A. (PCBC), Incalpa, S.A., Materiales BYM, S.A. Cales de Chiapas, S.A., Cal de Apasco, S.A., Cales de Puebla, S.A. Materiales Titan, S.A., Industrias Quimicas de Yucatan, S.A. (IQY), and Calteco, S.A. Two other companies, Apex, S.A. and Refractarios Barrios, S.A., submitted responses that were too late to be considered in this investigation.

The period for which we are measuring benefits is the most recent fiscal or calendar year for which we have complete data, calendar year 1983. In their responses, the government of Mexico and respondents provided data for the applicable period.

**Analysis of Programs**

Throughout this notice, we have applied to the facts of the current investigation general principles described in detail in the Subsidies Appendix of the "Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina"; 49 F.R. 18006 (Apirl 26, 1984). As per the Subsidies Appendix, we have used the national average commercial rate as the benchmark for short-term peso-denominated borrowing. For this purpose, we chose the nominal rate publiched monthly by the Banco de Mexico in the *Indicadores Economicos* (the "IE" rate). These rates are the weighted averages of the rates charged by commercial banks on peso loans. Because we lack information to construct company-specific long-term benchmarks, we have also used this benchmark on long-term benchmarks, we have also used this benchmark on long-term peso loans for 1982 and 1983 as the best information available. The "IE" rate is the representative benchmark for both short and long-term borrowing in the past 2 years because Mexico's recent inflationary experience has virtually eliminated all long-term fixed-rate financing. Long-term loans are generally provided at variable short-term interest rates. As the benchmark for long-term loans given prior to 1982 we are using the domestic corporate bond yield in Mexico, published in the "World Financial Markets" journal of the Morgan Guarantee Trust Company of New York. For loans provided in dollars, we used the U.S. domestic corporate bond yield as the long-term benchmark and the short-term commercial and industrical loan rate published under "Domestic Financial Statistics" in the *Federal Reserve Bulletin* as the short-term benchmark.

As specified in 19 CFR 355.28(a)(3), "if separate enterprises have received materially different benefits, such differences shall also be estimated and stated." Because the companies under investigation received materially different benefits, we have calculated company-specific rates.

We have consistently held that government provision of, or assistance in obtaining, capital or loans or credit does not *per se* constitute a subsidy. Government equity purchases and financial backing bestow a countervailable benefit only when they are carried out on terms inconsistent with commercial considerations. To determine if such actions are commercially unsound, we review and assess financial data for the company in question. With regard to whether a company was a reasonable equity investment (a condition we have termed "equityworthiness"), we examine the financial ratios, operating profits or losses and other relevant data to evaluate the company's current and future ability to earn a reasonable rate of return on equity investments.

Based upon our examination of these factors with respect to Sonocal, a company alleged to be unequityworthy, we determined that this company was unequityworthy as of 1982. Our examination of these factors for Mexicana de Cobre revealed that this company has been equityworthy.

Based upon our analysis of the petition and the responses to our questionnaire, we determine the following:

**I. Programs Determined To Confer Bounties or Grants**

We determine that bounties or grants are being provided to manufacturers or exporters in Mexico of lime under the following programs:

*A. FOMEX*

FOMEX is a trust established by the government of Mexico to promote the manufacture and sale of exported products. The fund is administered by the Mexican Treasury Department with the Bank of Mexico acting as the trustee. The Bank of Mexico administers the financing of FOMEX loans through financial institutions that establish contracts for lines of credit with manufacturers and exporters. On July 27, 1983, FOMEX was formally incorporated into the National Bank for Foreign Trade.

In order for a company to be eligible for FOMEX financing for exports, the following requirements have to be met: (1) The product to be manufactured must be included on a list made public by FOMEX; (2) the company must have majority Mexican capital; (3) the articles to be exported must have a minimum of 30 percent national content in direct production costs; (4) loans granted for pre-export financing must be in Mexican currency, while loans for export sales are established in U.S. dollars or any other foreign currency acceptable to the Bank of Mexico; (5) the exporter must carry insurance against commercial risks to the extent of the loans. The maximum annual interest rate for FOMEX export financing is 6 percent.

Sonocal received short-term export financing from FOMEX for exports to the U.S. of the subject merchandise. Since FOMEX export financing provides loans for export-related purposes at interest rates significantly less than those for comparable commercially available loans, we determine that this program confers a bounty or grant upon the exportation of lime.

Sonocal has not paid either interest or principal on its FOMEX loans, which were due to be repaid in early 1983. We treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being asessed on them. We considered these loans to be rolled over each time a payment was missed. Since the penalty rate was above the benchmark, we found no benefit for the additional loans. We used as our benchmark, for purposes of calculating the bounty or grant, the IE rate, as described *supra*. We allocated the benefit from the FOMEX loans over the value of Sonocal's 1983 U.S. exports of lime and calculated a bounty or grant in the amount of 0.36 percent *ad valorem* FOMEX loans to Mexicana de Cobre are described in the "Programs Found Not to Confer Bounties or Grants" section of this notice.

*B. Fund for Industrial Development (FONEI)*

FONEI is a specialized financial development fund, administered by the Bank of Mexico, which grants long-term credit at below-market rates for the creation, expansion or modernization of enterprises in order to foster industrial decentralization and the efficient production of goods capable of competing in the international market. FONEI loans are available under various programs having different eligibility requirements.

Sonocal had one FONEI loan outstanding during the period for which we are measuring bounties or grants. It received the loan for plant expansion. Calteco had two loans outstanding, one for the purchase of capital equipment and the other an industrial mortgage loan.

We have evidence that these FONEI loans are only available to companies located outside of Zone IIIA (Mexico City and environs). Because such loans appear to be limited to particular geographic regions and are made at below-market rates, we determine that these FONEI loans confer a bounty or grant upon Sonocal and Calteco.

We have determined the benefits from these loans according to the methodology outlined in the Subsidies Appendix. We used as our benchmark the IE rate, as described *supra*. Since Sonocal has not paid either interest or principal on these loans, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered these loans to be rolled over each time a payment was missed. We allocated the benefit over Sonocal's total sales value of lime and determined a bounty or grant in the amount of 0.89 percent *ad valorem* for Sonocal and 1.25 percent *ad valorem* for Calteco.

*C. CEPROFI*

CEPROFIs are tax credits used to promote National Development Plan (NDO) goals, which include increased employment, encouragement of regional decentralization, and industrial development, particularly of small and medium sized firms.

CEPROFI certificates are tax certificates of fixed value which may be used for a five-year period to pay federal taxes. Certain CEPROFI certificates are granted for carrying out investments in "priority" industrial activities; others are available to all industries on equal terms.

Industrias Quimicas de Yucatan and Sonocal received CEPROFIs for carrying out investments in priority industrial activities. These CEPROFIs were for investment to increase productivity. Because this type of CEPROFI is limited to a specific group of industries or to companies located in specific regions, we determine that this program confers a bounty or grant.

Article 25 of the decree authorizing the issuance of CEPROFIs published in the *Diario Official de la Federacion (Diario Official)* on March 6, 1979, states that a 4 percent supervision fee must be "paid in order to qualify for, or to receive" the CEPROFIs. This is an allowable offset from the gross bounty or grant, as provided in section 771(6)(A) of the Act. Therefore, the benefit provided by CEPROFIs is the amount of the certificate received less the supervision fee.

We allocated the CEPROFI benefit over the total sales of each company and determined a bounty or grant in the amount of 1.37 percent *ad valorem* for Industrias Quimicas de Yucatan and 0.73 percent *ad valorem* for Sonocal.

*D. Import Duty Reductions and Exemptions*

Petitioner alleged that lime exporters receive import duty reductions or exemptions on equipment used in the production of lime. Mexicana de Cobre received reductions on import duties for equipment used in manufacturing lime under a special tax agreement between it and the government of Mexico. Because this reduction resulted in a benefit provided to a specific company, we determine that it conferred a bounty or grant on Mexicana de Cobre. We calculated the benefit by dividing the amount of the reduction in 1983 by total sales of lime of the company to calculate a bounty or grant of 0.07 percent *ad valorem*.

*E. Certain Equity Infusions*

Petitioner alleged that the government of Mexico has provided bounties or grants through equity infusions to Mexican companies on terms inconsistent with commercial considerations. NAFINSA, a government-owned development bank, purchased stock in Sonocal, a company whose stock is not publicly traded, between 1976 and 1983. Using the criteria described in the "Analysis of Programs" section of this notice, we determined that Sonocal became an unequityworthy company as of 1982. Therefore, we determine that the investments in 1982 and after confer a bounty or grant because they were made on terms inconsistent with commercial considerations.

We calculated the benefits from these purchases according to the methodology outlined in the Subsidies Appendix. We allocated the amount of Sonocal's benefit over its total sales value for 1983, using as our discount rate the "IE" rate, as described *supra*. We calcuated a bounty or grant of 40.49 percent *ad valorem*. Government equity infusions in another lime company are described in the "Programs Determined Not to Confer Bounties or Grants" section of this notice.

*F. Loans From the Mexican Trust for Non-Metallic Minerals*

Sonocal received loans from the Mexican Trust for Non-Metallic Minerals. Since these loans were

provided at interest rates lower than those for comparable commercially available loans and were limited to a specific industry or group of industries, we determine that these loans conferred a bounty or grant on Sonocal.

Since neither interest nor principal was paid on these loans during 1983, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered these loans to be rolled over each time a payment was missed. For purposes of this determination, we are using as our benchmark the IE rate, as described *supra*. We allocated the amount of the benefit over Sonocal's total 1983 sales value and determined a bounty or grant of 2.22 percent *ad valorem*.

*G. Guarantee and Development Fund for Medium and Small Industries (FOGAIN)*

Productos Calizos de Baja California (PCBC), Materiales BYM, and Industrias Quimicas de Yucatan (IQY) received FOGAIN loans that had outstanding principal during the period of investigation. We determine that the FOGAIN program confers a benefit which constitutes a bounty or grant within the meaning of the countervailing duty law upon these respondent lime companies. The FOGAIN program provides preferential financing at interest rates below prevailing commercial rates to all small and medium sized firms in Mexico. However, interest rates will vary depending upon: (a) Whether a small or medium sized business has a designated priority status, and (b) the geographical location of the business. Small and medium sized business with priority designation and located in specific zones targeted for industrial growth receive the most preferential rate. Medium sized businesses, not designated as priority and located in an area of controlled industrial growth, may receive the least preferential FOGAIN interest rate. We determine this program to be countervailable because it provides preferential financing on the basis of priority status for designated industries and regional preferences within the program. Without these designations, FOGAIN would not be countervailable, since all small and medium sized firms in Mexico are at least eligible to receive FOGAIN loans at the least preferential rate of interest available under this program. Therefore, we determine the program is countervailable to the extent that the interest rate received by a particular company is below the least preferential rate that a company would have received under FOGAIN. All three companies obtained their loans at rates lower than the least preferential rates applicable.

Since the FOGAIN loans have variable interest rates, we treated the loans as a series of short-term loans and computed the difference in interest payments between the FOGAIN loans received by PCBC, Materiales BYM and IQY and those which would have been incurred had the loans been made at the least preferential rate of interest under this program. We allocated the amount of benefit from the loans over each company's total value of sales of all products during 1983. We determine the net amount of the bounty or grant to be 0.48 percent *ad valorem* for PCBC, and 0.70 percent *ad valorem* for Materiales BYM and 0.20 percent *ad valorem* for IQY.

*H. Delay of Payment of Fuel Charges*

Sonocal received fuel oil and diesel fuel during 1983 from PEMEX, a Mexican government entity, for which it has not yet made payments. We have evidence that other customers, including Mexican producers of lime and other products, pay for such fuel as received on a monthly basis. Therefore, we find the delay of payment to confer a bounty or grant on Sonocal. We treated the amounts owed by Sonocal to PEMEX as interest-free short-term loans.

We have determined the benefits from these loans according to the methodology outlined in the Subsidies Appendix. We used as our benchmark the IE rate, as described *supra*. We allocated the benefits over Sonocal's total sales value and determined a bounty or grant in the amount of 4.78 percent *ad valorem*.

*I. Delay of Payment on Other Loans*

Sonocal has four loans outstanding from "Banco Mexicano Somex," formerly a private bank that was nationalized during the Mexican banking industry reforms of 1982. Two are short-term loans in dollars which were due to be repaid prior to the review period but have not been repaid. The other two are long-term loans in pesos. Sonocal did not pay the principal and interest due on the loans during 1983. Since this delay in payments was provided to a specific industry or group of industries, we determine that these loans conferred a bounty or grant on Sonocal.

We treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered the loans to be rolled over each time a payment was missed. We used our peso and dollars benchmarks as appropriate, as described *supra*. We allocated the amount of the benefit over Sonocal's total 1983 sales value and determined a bounty or grant of 0.02 percent *ad valorem*.

*J. Loans From the Mexican National Bank for Foreign Trade (BANCOMEXT)*

Sonocal has several loans outstanding from BANCOMEXT. One of these loans was originally contracted as a guarantee, but it operates like a direct loan because BANCOMEXT has made all the principal and interest payments to the foreign lender on behalf of Sonocal. This loan is in dollars; the others are in pesos. These loans were provided at interest rates lower than those for comparable commercially available loans and we were not allowed to verify whether they were provided for exports or limited to a specific industry or group of industries. Therefore, as the best information available, we determine that these loans conferred a bounty or grant on Sonocal.

Since interest on these loans was not paid during 1983, we treated the missed payments as additional loans to Sonocal at the rate of the penalty interest rate being assessed on them. We considered the loans to be rolled over each time a payment was missed. For purposes of this determination, we are using as our benchmark for the peso loans the IE rate, as described *supra*. The benchmark for the dollar loan loans is the long-term U.S. corporate bond rate, also described *supra*. We allocated the amount of the benefit over Sonocal's total 1983, sales value and determined a bounty or grant of 0.40 percent *ad valorem*.

**II. Programs Determined Not To Confer Bounties or Grants**

We determine that bounties or grant are not being provided to manufacturers or exporters in Mexico of lime under the following programs:

*A. Other Equity Infusions*

Both NAFINSA and the Commission de Fomento Minero, a publicly-owned lending institution, purchased stock in Mexicana de Cobre. Private parties made purchases of the company's stock at comparable terms on approximately the same dates. Using the criteria described in the "Analysis of Programs" section of this notice, and considering the fact that government investments in this company were on the same terms and conditions as private investments, we determine that this government equity investment did not confer a bounty or grant on Mexicana de Cobre.

*B. Dual Level Currency Exchange Rate System*

Petitioner alleged that the dual level exchange rate system existing in Mexico constitutes a countervailable benefit to the lime industry.

Petitioner alleged that priority industries, including lime, when exchanging pesos for dollars to make foreign purchases, are allowed to convert currency at a "controlled" rate, but that other industries must make foreign purchases at the free market rate. Currently, the controlled rate is less than the "free" rate of exchange.

We have found that all industries in Mexico, including lime, obtain dollars from the government under the same terms to purchase imports. Therefore, we determine that the dual currency exchange rate system does not confer a bounty or grant to the manufacturers or exporters in Mexico of lime.

*C. CEPROFIs for Salary Increases and Investment in Mexican-Made Equipment*

Sonocal received certain CEPROFIs for salary increases and for investment in Mexican-made equipment. We determine that these types of CEPROFIs do not confer a bounty or grant because they are not limited to a specific industry, group of industries, or to companies located in specific regions of the country.

*D. Loan Guarantees Provided by NAFINSA*

Petitioner alleged that various Mexican government entities guaranteed loans to the lime industry. During the period of investigation, Mexicana de Cobre had several outstanding loans guaranteed by NAFINSA, a government-controlled institution which is a shareholder of Mexicana de Cobre. Mexicana de Cobre paid a guarantee fee to NAFINSA and provided security for the guarantees. Further, we have evidence that the provision of guarantees by major shareholders of companies is a normal commercial practice in Mexico. Therefore, the terms of the guarantees appear to be consistent with commercial considerations and do not confer a bounty or grant on Mexicana de Cobre.

*E. Value-Added Tax Rate Reduction*

Petitioner alleged that lime producers in border areas receive a countervailable benefit from a reduction in the rate of value-added tax (VAT) they pay on purchases in such areas. We have found that such reductions exist in border areas, but that under the value-added tax system, these reductions do not result in any benefit to lime producers. Only the final consumers of goods ultimately pay the VAT, not producers or suppliers such as the respondent companies. These companies act only as collection agents for the government. They file regular statements with the government in which they settle their value-added tax accounts. Since lime producers are reimbursed for the amount of tax they pay and have no liability for the VAT tax, the border reductions do not confer a bounty or grant on them.

*F. Provision of Land to Sonocal*

At verification we learned for the first time during this investigation that Sonocal received land free of charge from the Mining Development Commission and that the Commission had received the land at no cost from private parties. Based on this verification, we determine that the provision of this land at no cost was not inconsistent with commercial considerations and does not confer a bounty or grant on Sonocal.

*G. Accelerated Depreciation Allowances*

Petitioner alleged that the lime industry benefited from federal income tax reductions through accelerated depreciation. For purposes of economic development, the Income Tax Department may grant accelerated depreciation allowances to industries in certain geographical regions or for designated industrial activities. Mexicana de Cobre used accelerated depreciation in 1982 under an agreement with the government of Mexico. The program did not confer a bounty or grant on Mexicana de Cobre, however, because the registered losses for tax purposes exceeded the depreciation claimed by the company.

*H. Waiver of Foreign Lender Tax*

Foreign loans to Mexicana de Cobre are subject to an exemption on the Mexican interest tax paid by foreign lenders. This exemption is provided under an agreement with the Mexican Department of the Treasury. As a result of this exemption, the company could receive a countervailable benefit in the form of reduced rates of interest on foreign loans. Most of Mexicana de Cobre's foreign loans, however, were provided specifically for operations other than lime. Its other foreign loans were provided at rates above the benchmark for long-term dollar borrowings. Therefore, we determine that this program did not confer a bounty or grant on Mexicana de Cobre.

**III. Programs Determined Not To Be Used**

We determine that the following programs have not been used by manufacturers or exporters of lime.

*A. Article 94 Loans*

Under section II of Article 94 of the *General Law of Credit Institutions and Auxiliary Organizations* (the Banking Law), the Bank of Mexico establishes channels of credit to different sectors of economic activity. There are 12 categories of credit under section II.

Most categories carry their own maximum interest rate which is set by the Bank of Mexico. Loans granted under category 12 are targeted to exports of manufactured products. The maximum interest rate under this category is 8 percent. We have found that these loans were not used by the companies under investigation.

*B. FOMEX and BANCOMEXT Loans to U.S. Importers*

U.S. customers of lime were alleged to have received FOMEX and BANCOMEXT loans. We have found that no U.S. customers of Mexican lime producers received FOMEX or BANCOMEXT loans that has outstanding principal during the period of investigation.

*C. National Preinvestment Fund for Studies and Projects (FONEP)*

FONEP, administered by NAFINSA, finances economic, technical and feasibility studies, as well as basic and detailed engineering projects. We have found that this program was not used by the companies under investigation.

*D. Trust for Industrial Parks, Cities, and Commercial Center (FIDEIN)*

This program is aimed at developing industrial parks and cities. We have found that this program was not used by the companies under investigation.

*E. Fondo National de Fomento Industrial (FOMIN)*

FOMIN operates as a trust fund, providing assistance to certain small and medium sized companies by either buying stock or providing loans at rates below those of commercial lending institutions. We have found that this program was not used by the companies under investigation.

*F. PROFIDE*

PROFIDE has been established under the auspices of FOMEX to administer a new financing program to provide exporters with foreign currency needed for imports. We have found that this

program was not used by the companies under investigation.

*G. Preferential Prices for Natural Gas, Oil, Electricity, Diesel Fuel and Petrochemicals*

Petitioner alleged that prices for natural gas, oil, diesel fuel, petrochemicals and electricity are set by the Mexican government and could include a 30 percent discount for respondents. The Mexican lime industry has not received price discounts for these items.

*H. Other FOMEX Loans*

Mexicana de Cobre received several FOMEX export and pre-export loans that had outstanding principal during the review period. We found at verification that these loans were used exclusively for operations of the company other than the production of lime. Therefore, we determine that these loans were not used for Mexicana de Cobre's production or exportation of lime.

*I. Nacional Financiera, S.A., Loans*

Mexicana de Cobre received loans from the Nacional Financiera, S.A. (NAFINSA), a government-owned development bank, during the last month of the period of investigation. Because we calculate benefits from variable interest rate loans on a date of payment basis, we find that these loans were not used by Mexicana de Cobre during the period of investigation.

*J. Income Tax Rate Reductions*

Mexicana de Cobre is eligible for an income tax rate reduction under an agreement with the Mexican Department of the Treasury. No benefits were realized in 1983 because the company did not have taxable income in tax year 1982.

**Petitioner's Comments**

*Comment 1:* Petitioner argues that logic, the statute and judicial authority all mandate the conclusion that the Mexican government's provision of fuel to Mexican lime producers at a price far below its international market value confers a subsidy that must be countervailed.

*DOC Response:* As stated in the "Notice of Initiation" of this case, we did not investigate this allegation because it has previously been found not to confer a bounty or grant, and petitioners did not allege new facts to justify a review of this finding.

*Comment 2:* Petitioner argues that because of Sonocal's poor economic performance, the equity infusions received by it in 1978 and all succeeding years conferred a bounty or grant that must be countervailed.

*DOC Response:* The Department's position is fully described in its response to respondent's comment 3.

*Comment 3:* Petitioner argues that the provision of free land and free mineral rights to Sonocal by the Mexican government is a countervailable subsidy and that the value of the property grant is the value of the property in October, 1983, when the grant to Sonocal was made. Petitioner suggests we calculate a benefit to Sonocal based on the value of land of U.S. lime companies across the border.

*DOC Response:* We based our determination on the evidence concerning the value of the land as measured in Mexico since we believe it is inappropriate to do cross-border comparisons. As a result of verification, we conclude that the provisions of the land at no cost was not inconsistent with commercial considerations in Mexico and did not confer a bounty or grant on Sonocal. We will reconsider this issue during the first review of this order.

*Comment 4:* Petitioner argues that plant and equipment CEPROFIs received in the years before 1983, when that plant and equipment were used to produce lime during the period of investigation, must be countervailed.

*DOC Response:* CEPROFIs constitute a tax deduction to recipient companies. It is the Department's consistent practice to recognize tax benefits as one-time benefits pertaining to the year in which they were realized.

*Comment 5:* Petitioner argues that due to its poor financial performance Sonocal should be found uncreditworthy as of 1978.

*DOC Response:* Counsel for petitioners had access to Sonocal's financial statements as of June 4, 1984. Using those statements as a basis, they alleged uncreditworthiness on July 25, 1984, roughly one month prior to the final determination. Considering the complexity of analysis necessary to investigate this allegation, we consider it to be too late to be considered in this investigation.

*Comment 6:* Petitioner argues that no lime manufacturer should be excluded from a final affirmative countervailing duty order. They state that those who have requested exclusion submitted certifications supporting their requests for exclusion that were incomplete.

*DOC Response:* Exclusions have been granted where the applications were made on a timely basis and we have found that the companies received either no benefits or benefits in *de minimis* amounts. Under these circumstances exclusions are consistent with Commerce Regulations (19 CFR 355.38).

*Comment 7:* Petitioner argues that, for loans on which Sonocal paid no principal or interest during 1983, the penalty rate of interest being assessed should be compared to the penalty that would be assessed in similar circumstances in a corresponding commercial loan rather than to normal commercial rates on sound loans.

*DOC Response:* Where Sonocal failed to meet its loan interest and principal repayments, we treated these as new loans taken out at the penalty interest rate on the date the original payments were due. We consider that any benefit from the new loans should be calculated under our normal loan methodology, using the IE rate as benchmark. For every missed payment, we rolled over the previous amount of principal and interest due and constructed a new loan at the penalty rate and compared it to the IE rate in effect at that time. We calculated the present value of the original amount of the loan as a grant and compared it to the subsidy amount calculated under the methodology above to ensure that we did not countervail more than if we treated the benefit as a grant.

*Comment 8:* Petitioner argues that Mexicana de Cobre received a countervailable subsidy by reason of accelerated depreciation it is permitted to take for income tax purposes. Petitioner contends that:

- Mexicana de Cobre's argument that it is not a benefit is based on a computation and data that are artificial constructs which do not in fact disclose the extent to which it actually applied accelerated depreciation on particular facilities in computing its taxes.
- Mexicana de Cobre's computation is methodologically unsound because it does not accurately state the depreciation the company would have been entitled to claim on its facilities for tax purposes.
- The company benefits from any such special depreciation even in a tax loss year; both to the extent that the special allowance helped to reduce or eliminate taxable earnings and to the extent that any resulting tax loss can be carried forward or back to other years.

*DOC Response:* Since the company incurred a tax loss during 1982 that exceeded the amount of depreciation taken by it, the company could not have benefitted from this program. Any future effects from loss carry forward will be considered in annual reviews of this determination.

*Comment 9:* Petitioner argues that loans and loan gurantees to Mexicana de Cobre should be considered to be either directly or indirectly related to Mexicana de Cobre's lime operations unless it is established that the loan authorization: (a) Expressly precludes the use of the proceeds for ancillary operations such as lime production; or (b) expressly required dedication of the proceeds exclusively to the acquisition and construction of specific facilities that are used only for production of products other than lime and it is clear that related, ancillary facilities are not covered.

*DOC Response:* For certain loans to Mexicana de Cobre, we found at verification that the loan contract specifically stated that the intended use of the proceeds is for operations of the company other than lime. We consider this sufficient evidence to establish that these loans did not benefit the company's lime production.

*Comment 10:* Petitioner argues that the waiver of the foreign lender tax on loans to Mexicana de Cobre is clearly preferential and is also clearly a countervailable benefit.

*DOC Response:* We find the tax exemption is not countervailable because the tax is normally paid by the foreign lender, not the Mexican company, and thus the foreign lender benefits from the tax savings. As stated above, we looked to see if Mexicana de Cobre benefitted from reduced interest rates on foreign loans as a result of this exemption and found that it did not.

*Comment 11:* Petitioner contends that Sonocal's CEPROFIs for salary adjustment may not have been granted under the Mexican Decree of April 16, 1982 as Sonocal claims. Petitioner also contends that Sonocal's CEPROFIs for investment in machinery and equipment are targeted to specific priority industries and/or regions of the country, and thus are countervailable.

*DOC Response:* The documents we examined at verification clearly established that Sonocal's CEPROFIs for salary adjustment were provided under the Decree of April 16, 1982. Further, two of the three CEPROFIs to Sonocal for investment in plant and equipment are not countervailable. They were provided under the Decree of March 6, 1979, which states that CEPROFIs of 5 percent of the investment in Mexican-made equipment are available to all industries in all regions of Mexico, and were shown to be provided for 5 percent of Sonocal's investment in Mexican-made machinery.

**Respondents Comments**

*Comment 1:* Counsel for Productos Calizos de Baja California, Materiales Titan, Industrias Quimicas de Yucatan, Apax and Refractarios Basicos ("The Five") contend that Apax and Refractarios Basicos did not receive any benefits and should be excluded from any final affirmative determination or, if exclusion is denied, receive a zero countervailing duty deposit rate.

*DOC Response:* Apax and Refractarios Basicos were not considered for exclusion because they did not submit responses or requests for exclusion on a timely basis.

*Comment 2:* Counsel for The Five argue that FONEP benefits are generally available and therefore FONEP should be found not to constitute a bounty or grant under Section 303 of the Act.

*DOC Response:* It was established that these benefits were not used by the companies under investigation, and therefore this issue is moot.

*Comment 3:* Counsel for Sonocal argues that Sonocal has been an equityworthy company thoughout its existence, based upon:

- favorable feasibility studies in 1977 and 1980
- increasing sales
- the context of Mexico's recent economic history

*DOC Response:* The evidence presented by Sonocal's counsel has been taken into account in our finding of unequityworthiness. Early feasibility studies projected success for the company, and the company did reflect a profit for 1978 and 1979. However, its later performance did not match these projections and while the company's sales increased, losses continued.

It was also pointed out that adverse economic conditions affected all companies in Mexico. Comparison of the rate of return on equity for Sonocal to that of other companies in Mexico was one of the factors considered by the Department in its equityworthy determination. We also note that comparisons of rates of return are performed when assessing the *ad valorem* subsidy rate. Therefore, if Sonocal's performance was average or better than the average return in Mexico during the review period, no subsidy rate would be found based upon equity infusions.

*Comment 4:* Counsel for Sonocal argues that it can be accountable only for the difference between what it owes the Mexican government in unpaid fuel bills and what the government owes it under the value-added tax regime and that this difference does not represent a subsidy because it is just a sales price PEMEX has not yet collected.

*DOC Response:* We find that the uncollected bills of PEMEX confer a bounty or grant on Sonocal because the delay in payment is a financial benefit to it which appears to be provided solely to that company. Further, we do not consider the amount owed Sonocal under the value-added tax regime an allowable offset under section 771(6)(A) of the Act.

*Comment 5:* Counsel for Sonocal argues that loans and equity received for use in connection with its unfinished Colima plant are not countervailable benefits because the plant has not yet produced any of the products under investigation.

*DOC Response:* The loans and equity received by Sonocal for its Colima plant, which will be used exclusively to produce lime, saved the company funds it would otherwise have had to spend on that project. This resulted in lower costs to the company for the production of lime. This benefit is similar to that of funds for research and development and grants for restructuring, which we have in the past found countervailable. Therefore, those loans and equity conferred benefits that consititute countervailable subsidies.

*Comment 6:* Counsel for Mexicana de Cobre argues that the Department should base its determination with respect to the use of accelerated depreciation upon the tax return for its 1983 fiscal year, not its 1982 fiscal year, because such a "lag" in quantification is inconsistent with generally accepted accounting principles.

*DOC Response:* The Department has a consistent policy of valuing income tax benefits at the time of the filing of the official tax return when the actual benefit to the company can be calculated, rather than simply estimated.

*Verification*

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During this verification, we followed normal procedures, including meetings and inspection of documents with government officials and on-site inspection of the records and operation of the companies exporting the merchandise under investigation to the United States.

*Administrative Procedures*

We afforded interested parties an opportunity to present information and written views in accordance with Commerce regulations (19 CFR 355.34(a)). Written views have been

received and considered in reaching this final determination.

*Suspension of Liquidation*

The suspension of liquidation ordered in our preliminary affirmative determination shall remain in effect with regard to Sonocal, IQY, Calteco and Materiales BYM, until further notice. The net bounty or grant for duty deposit purposes for each of these firms is as follows:

| Manufacturer/exporters | Ad valorem rates |
|---|---|
| Sonocal | 55.89 |
| All other Manufacturers/Exporters | 1.21 |

The net bounty or grant for PCBC is 0.48 percent; for Mexicana de Cobre is 0.07 percent; for Incalpa, Cales de Chiapas, Cal de Apasco, Cales de Puebla and Materiales Titan is zero. These are *de minimis*. Accordingly, the products subject to this investigation produced by these companies are being excluded from this determination. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated with respect to these firms. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released for entries of the products under investigation manufactured by these firms.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of lime from Mexico which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that it is commencing an administrative review of this order on September 11, 1984. For further information regarding this review, contact Richard Moreland at (202) 377–2786.

This notice is published pursuant to sections 303 and 706 of the Act (19 U.S.C. 1303, 1671e).

**Christopher Parlin,**

*Acting Assistant Secretary for Trade Administration.*

[FR Doc. 84-23981 Filed 9-10-84 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review; Issuance

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review.

**SUMMARY:** The Department of Commerce has issued an export trade certificate of review to Great Agassiz Basin Export Trading Company, Inc. ("Great Ag"). This notice summarizes the conduct for which certification has been granted.

**ADDRESS:** The Department requests public comments on this amendment. Interested parties should submit their written comments, original and five (5) copies, to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230.

Comments should refer to the certificate as "Export Trade Certificate of Review, application number 84–00022".

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–377–5131, or Eleanor Roberts Lewis, Assistant General Counsel for Export Trading Companies, Office of General Counsel, 202–377–0937. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing the Act are found at 48 FR 10595–10604 (March 11, 1983) (to be codified at 15 CFR Part 325). A certificate or review protects its holder and the members identified in it from private treble damage actions and government criminal and civil suits under federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

### Standards for Certification

Proposed export trade, export trade activities, and methods of operation may be certified if the applicant establishes that such conduct will:

1. Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

2. Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant;

3. Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant; and

4. Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

The Secretary will issue a certificate if he determines, and the Attorney General concurs, that the proposed conduct meets these four standards. For a further discussion and analysis of the conduct eligible for certification and of the four certification standards, see "Guidelines for the Issuance of Export Trade Certificates of Review," 48 FR 15937–15940 (April 13, 1983).

The Office of Export Trading Company Affairs received an application for an export trade certificate of review from Great Ag on June 11, 1984. The application was deemed submitted on June 14, 1984. A summary of the application was published in the **Federal Register** on June 27, 1984 (49 FR 26272–26273 (1984)).

### Description of Certified Conduct

Based on analysis of the application and other information in their possession, the Department of Commerce has determined, and the Department of Justice concurs, that the following export trade, export trade activities, and methods of operation specified by Great Ag meet the four standards of the Act:

Great Agassiz Basin Export Trading Company, Inc.—Application No. 84–00022.

Members: International Enterprises, South Fargo, ND; Advisors, Inc., Fargo, ND; ECO–AG, Inc., Boise, ID; Uebergang-Williams Mineral and Proten Application Co., Fargo, ND; and Crary-Williams Attorneys, Walhalla, ND.

### Export Trade

a. *Products.* Durum wheat, hard spring wheat, potatoes, millet, triticale, barley, sunflower seeds, and sunflower oil.

b. *Services.* Animal husbandry services.

### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern

Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operation**

1. Great Ag may determine its prices for Products and Services in the Export Markets.

2. Great Ag may enter into and terminate exclusive agreements with suppliers individually wherein:

a. Great Ag agrees not to represent any competitors of such supplier as an Export Intermediary unless authorized by the supplier; and/or

b. The supplier agrees not to sell, directly or indirectly through any other Export Intermediary, into the Export Markets in which Great Ag represents the Supplier as Export Intermediary.

3. Issuance of new stock and restrictions on transfer of stock of Great Ag may be at the discretion and/or approval of the board of directors of Great Ag.

4. For invitations to bid or sales opportunities in the Export Markets, Great Ag may

a. Contact separately suppliers of Products or Services specified in the invitation to bid or purchase specifications;

b. Distribute, subject to Term and Condition (a) below, to suppliers separately information about the bid, bid requirements, bidding dates, and any other information necessary for Great Ag to compile a responsive bid;

c. Solicit and receive independent quotations for the Products or Services from suppliers separately, provided that Great Ag does not reveal to any supplier the quotation of any other supplier or the identity of the supplier that provide the quotation;

d. Enter into independent agreements with suppliers individually whereby Great Ag will submit a response to the bid invitation or request for quotation; or

e. Any combination of (a) through (d) above.

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.5(c) which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.10(a), any person aggrieved by the secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The certificates may be inspected and copied in accordance with regulations published in 15 CFR Part 4. Information about the inspection and copying of records at this facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202–377–3031.

Dated: September 6, 1984.

**Irving P. Margulies,**

*General Counsel.*

[FR Doc. 84–24004 Filed 9–10–84; 8:45 am]

BILLING CODE 3510–DR–M

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S. C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing; U.S. Department of Commerce; P.O. Box 1423; Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

**Douglas J. Campion,**

*Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

**Department of Agriculture**

SN 6–391,065 (4,458,630)
Disease Control In Avian Species By Embryonal Vaccination

SN 6–456,930 (4,458,538)
Apparatus and Method of Measuring Edgewise Compressive Deformation

SN 6–527,894 (4,443,222)
Zinc Pyrithione Process to Impart Antimicrobial Properties to Textiles

SN 6–593,058
Visual-Olfactory Habitat Mimic for Assessment of Fruit Fly Response to Bahavior-Modifying Chemicals

**Department of Health and Human Services**

SN 6–267,538 (4,443,431)
Neisseria Gonorrhoeae Vaccine

SN 6–637,880
Hepatitus B Core Antigen Vaccine Made By Recombinant DNA

**Department of the Army**

SN 6–387,987 (4,459,567)
Dielectric Waveguide Ferrite Resonance Isolator

SN 6–472,793
Adaptive Multiple Interference Tracking and Cancelling Antenna

SN 6–582,648
Flexible Mat

SN 6–596,778
An Explosive Ordnance Disposal Protective Suit

SN 6–598,751
Voice Integrated Presentation System

SN 6–661,091
Monolitchic Amplifier

**Environmental Protection Agency**

SN 6–381,743 (4,459,126)
Catalytic Combustion Process and System With Wall Heat Loss Control

[FR Doc. 84–23979 Filed 9–10–84; 8:45 am]

BILLING CODE 3510–04–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amending the Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Indonesia

September 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 12, 1984. For further information contact James Nader, International Trade Specialist (202) 377–4212.

**Background**

A CITA directive was published in the **Federal Register** on July 2, 1984 (49 FR 27194) which established import restraint limits for certain specified categories of cotton and man-made fiber textile products, including women's, girls' and infants' woven cotton blouses in Category 341, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1984. During consultations held August 15 and 16, 1984 between the Governments of the United States and the Republic of Indonesia, agreement was reached to amend the Bilateral Cotton, Wool and

Man-Made Fiber Textile Agreement of November 9, 1982 to establish a new specific limit for Category 341 of 360,000 dozen for the agreement year which began on July 1, 1984. The new limit is being adjusted to account for 8,476 dozen in carryforward used in the previous agreement year. The new limit, as adjusted, will be 351,524 dozen.

During these same consultations agreement was also reached to establish a new specific limit for carded duck fabric in Category 319 of 4,383,304 square yards for the agreement year which began on July 1, 1984. Inasmuch as the U.S. Customs Service has already been instructed to control imports in this category at this limit, no further instructions concerning this category are included in the letter which follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

September 6, 1984.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 27, 1984 which established import restraint limits for certain categories of cotton and man-made fiber textile products, produced or manufactued in Indonesia and exported during the agreement year which began on July 1, 1984.

Effective on September 12, 1984, paragraph one of the directive of June 27, 1984 is hereby amended to include an adjusted twelve-month restraint limit for cotton textile products in Category 341 of 351,524 dozen.[1]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-23984 Filed 9-6-84; 4:30 pm]

BILLING CODE 3510-DR-M

[1] The restraint limit has not been adjusted to reflect any imports after June 30, 1984.

## Adjusting Import Charges for Certain Cotton Textile Products Produced or Manufactured in the Republic of Korea

September 6, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 12, 1984. For further information contact Ross Arnold, International Trade Specialist (202) 377-4212.

### Background

A CITA directive was published in the **Federal Register** on January 4, 1984 (49 FR 492), which established import restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1984. Included in that directive was a restraint limit of 21,893,199 square yards for cotton printcloth in Category 315. That limit has been filled for the year and further entries are being prohibited. In reviewing the import data, it has been determined that shipments amounting to 1,825,445 square yards have been improperly charged to the limit for Category 315 from Korea. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commission of Customs to deduct 1,825,445 square yards from import charges made to the limit for Category 315.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

September 6, 1984.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, I request that, effective on September 12, 1984, you reduce charges to the restraint limit established in the directive of December 29, 1983 for cotton textile products in Category 315 by 1,825,445 square yards.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-23982 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DR-M

## Request for Public Comment on Bilateral Textile Consultations With the Government of India To Review Trade in Category 359pt. (Vests)

September 6, 1984.

On July 31, 1984, the Government of the United States requested consultations with the Government of India with respect to vests in Category 359pt. (T.S.U.S.A. numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200, and 383.4320). This request was made on the basis of Paragraph 16 of the Agreement between the Governments of the United States and India relating to trade in Cotton, Wool and Man-Made Textiles and Textile Products of December 21, 1982, which provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA may establish a prorated specific limit of 306,489 pounds for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 359pt., produced or manufactured in India and exported to the United States during the period which began on July 31, 1984 and extends through December 31, 1984.

The Government of the United States has decided, until such time as a mutually satisfactory solution is reached in consultations, to control imports in this category during the 90-day consultation period which began on July 31, 1984 and extends through October 28, 1984 at a level of 212,453 pounds.

In the event the level established for Category 359pt. during the ninety-day period is exceeded, such excess amounts, if they are allowed to enter at the end of the restraint period, shall be charged to the prorated twelve-month level described below.

A summary market statement for this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), and July 16, 1984 (49 FR 28754).

*Effective Date:* September 12, 1984.

Anyone wishing to comment or provide data or information regarding the treatment of Category 359pt. under the Bilateral Cotton, Wool and Man-Made Fiber Agreement with the Government of India, or on any other aspects thereof, or to comment on domestic production or availability of textile products included in this category, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

**SUPPLEMENTARY INFORMATION:** On December 16, 1983 a letter was published in the **Federal Register** (48 FR 55891) to the Commissioner of Customs from the Chairman of the Committee for the Implementation of Textile Agreements which established levels of restraint for certain categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1984. In the letter published below, pursuant to the terms of the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, pending agreement on a different solution, to prohibit entry for consumption or withdrawal from warehouse for consumption of cotton textile products in Category 359pt., exported during the indicated ninety-day period, in excess of the designated level of restraint.

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**India.—Market Statement**

*Category 359pt.—Cotton Vests*

July 1984.

U.S. imports of cotton vests, Category 359 part, from India during the year ending May 1984 were 737,000 pounds. This compares with 71,000 pounds a year earlier and is a sharp and substantial increase in imports. Much of the increase occurred during the first five months of 1984 when 569,000 pounds were imported compared with only 14,000 pounds a year earlier. India was the third largest supplier of these vests, accounting for 18.5 percent of the total imports during the year ending May 1984. It was the largest supplier during January–May 1984 when it accounted for 24.8 percent of the total. These imports from India are entered at duty-paid landed values which are below the U.S. producer price for comparable vests. These and other factors lead the United States Government to conclude that imports from India are creating a real risk of market disruption in the United States for such vests.

U.S. production of cotton vests declined from 424,000 dozen in 1981 to 205,000 dozen in 1983. Imports increased from 194,000 dozen to 270,000 dozen over the same period. The ratio of imports to domestic production increased from 45.8 percent in 1981 to 131.2 percent in 1983. Imports were up sharply during the first five months of 1984 with the January–May 1984 imports at a level more than twice that of a year earlier. This substantial increase indicates a further increase in the import to production ratio and a further loss in market share by the U.S. producers.

September 6, 1984.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,
*Department of the Treasury, Washington, D.C.*

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 13, 1983 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in India and exported during 1984.

Effective on September 12, 1984, paragraph one of the directive of December 13, 1983 is hereby further amended to include a limit of 212,453 pounds [1] for cotton textile products in category 359pt.,[2] produced or manufactured in India and exported during the ninety-day period which began on July 31, 1984 and extends through October 28, 1984.

Textile products in Category 359pt.[2] which have been exported to the United States before July 31, 1984 shall not be subject to this directive.

Textile products in Category 359pt.[2] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 84-23983 Filed 9-10-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after July 30, 1984.

[2] In Category 359, only TSUSA numbers 379.0270, 379.0654, 379.3950, 379.5700, 379.5820, 383.0628, 383.4200, and 383.4300.

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

**Revision**

Information concerns certain equipments available to contractors in

the performance of work required by statements of work, e.g. type and location of bulk petroleum storage facilities, pump capacities, and delivery systems.

Reporting is necessary to assure contractors ability to perform and to properly evaluate offers.

Businesses or others for profit/small businesses or organizations, 229 respondents, 2,519 hours.

Forward comments to Mr. Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20301, telephone 694–0187.

A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, OUSDRE(AM)CP, Room 3D116, Pentagon, Washington, D.C. 20301, telephone 697–8334. This is a revision of an existing collection.

Dated: September 6, 1984.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 84–23997 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

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## Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

**Reinstatement**

*1984 Post-Election Survey*

Market Facts, Inc., under a Department of Defense contract, has designed the 1984 Post-Election Voting Survey forms which seek out, on a voluntary basis, 10,000 U.S. citizens not affiliated with the federal government and living overseas and 500 local election officials, who desire to participate in DoD's absentee voting survey. The survey forms are used by Market Facts, Inc., staff to obtain absentee voting statistical data from U.S. citizen's residing overseas and local election officials. These potential voters and election officials are requested to voluntarily complete the survey questionnaire form. The forms solicit information on procedural and problem areas encountered in the absentee voting process. This information is used by the Federal Voting Assistance Program to prepare the report to the President and Congress as required by 42 U.S.C. 1973cc–11. There will be a total of 10,500 survey forms distributed a maximum of 10,500 respondents; 1749.99 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, Room 1C535, The Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Phyllis Taylor, FVAP, Room 1B457, Washington, D.C. 20301, telephone (202) 695–0663.

Dated: September 6, 1984.

**Patricia Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 84–23998 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

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## Establishing a Federally Funded Research and Development Center (FFRDC)

The Department of Defense, in compliance with the procedures of OFPP Policy letter No. 84–1, "Federally Funded Research and Development Centers" (April 4, 1984), announces its intention to designate the Logistics Management Institute an FFRDC to perform research, studies, and analyses in the areas of logistics and weapon systems acquisition. Such work includes research and analyses to: (1) Reduce costs and increase the effectiveness of military procurement, materiel management, logistics and manpower support activities and other related areas; (2) formulate and recommend changes in DOD policy relating to acquisitions and support of weapons systems and other defense resources requirements; (3) develop mathematical models and other management tools for the evaluation of logistics and manpower plans and materiel requirements, and (4) appraise the readiness of the Armed Forces.

Dated: September 6, 1984.

**Patricia Means,**

*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

[FR Doc. 84–23995 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

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## Department of the Air Force

## Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following: (1) Type of Submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of respondents; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

*Questionnaire for Contract Simplication Test*

This information is needed to assess industry response to a DOD-wide test that simplifies government contracts. The test is designed to make government contracts easier for contractors to understand and require less administrative paperwork on their part.

All contractors, including small businesses, who sell supplies under $500,000 to the Department of Defense: 3,500 responses; 875 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel J. Vitiello, DoD Clearance Officer, OASD, WHS, IRAD, Room 1C535, Pentagon, Washington, D.C. 20301, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from Maj.

James Barager, HQ USAF/RDCL, Pentagon, Washington, D.C. 20330, telephone (202) 694–2471.

Dated: September 6, 1984.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 84–23939 Filed 9–10–84; 8:45 am]

BILLING CODE 3910–01–M

## Department of the Army

### US Army Medical Research and Development Advisory Committee; Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, Sections 1–15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Entomology.

Date of Meeting: October 2 and 3, 1984.

Time and Place: 0830 hours, Conference Room, Bldg. 1425, US Army Medical Research Institute of Infectious Diseases, Fort Detrick, Frederick, MD

Proposed Agenda: This meeting will be open to the public from 0830–0945 hours on 2 October for the administrative review and discussion of the scientific research program of the Medical Entomology Group, Walter Reed Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), US Code, Title 5 and Sections 1–15 of Appendix, the meeting will be closed to the public from 1000–1630 hours on 2 October and from 0900–1200 hours on 3 October for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Howard Noyes, Associate Director for Research Management, Walter Reed Army Institute of Research, Bldg. 40, Room 1111, Walter Reed Medical Center, Washington, DC 20307 (202/576–2436) will furnish summary minutes, roster of Subcommittee members and substantive program informaion.

**Philip Z. Sobocinski,**

*Colonel, MSC Assistant Deputy Commander.*

[FR Doc. 84–23931 Filed 9–10–84; 8:45 am]

BILLING CODE 3710–08–M

### Public Information Collection Requirement Submitted to OMB for Review

The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondents; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

**Extension**

*Terminal and Transfer Facilities Survey*

Data complied into Port Series Reports used by the Army Corps of Engineers for navigation and planning functions, by Coast Guard for marine safety inspections, by Navy for guidance in providing safe passage and terminalling in time of National emergency by Army for mission deployment planning, and public for general reference, planning and various studies, WRSC Form 1 thru 9.

State or local governments, Business or Organizations: 1,341 respondents, 335 hours.

Forward comments to Edward Springer, OMB Desk Officer, Room 3235, NEOB, Washington, D.C. 20503, and Daniel Vitiello, DOD Clearance Officer, WHS/DIOR, Room 1C535, Pentagon, Washington, D.C. 20310, telephone (202) 694–0187.

A copy of the information collection proposal may be obtained from David O. Cochran, DAAG–OPI, Room 1D667, Pentagon, Washington, D.C. 20310, telephone (202) 695–5111.

Dated: September 6, 1984.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 84–23996 Filed 9–10–84; 8:45 am]

BILLING CODE 3810–01–M

## Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Confined Disposal of Polluted Sediments Dredged From Toledo Harbor Commercial Navigation Project at Toledo, OH

**AGENCY:** U.S. Army Corps of Engineers, Buffalo District, DOD.

**ACTION:** Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:**

1. *Description of Action.* The proposed action involves constructing an addition to the existing Federal confined disposal facility (CDF) at the mouth of the Maumee River adjacent to the Toledo Edison Company's Bay Shore Station. The existing facility is boot-shaped and covers an area of about 242 acreas. The proposed addition would extend from the northwest corner of the existing CDF to the northerly reach of the Toledo Edison water intake channel. This general southwestern expansion would cover an area of about 120–150 acres, depending on the final design and capacity requirements.

2. *Alternatives.* Potential alternatives to the proposed action consist of no-action, extending the life of the existing CDF, constructing a new CDF at another location, and expanding the Island 18 CDF which is presently filled to capacity.

3. *Scoping Process.* An initial scoping meeting was held with the Toledo-Lucas County Port Authority and concerned resource agencies on 16 August 1984. Additional coordination will be accomplished during preparation of the DEIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited. Significant issues to be analyzed in the DEIS include sediment and water quality, fish and wildlife impacts, and commercial shipping.

4. *Scoping Meeting.* No additional scoping meeting is currently scheduled.

5. *Availability.* The DEIS is scheduled to be available for review in September 1985.

**ADDRESS:** Questions about the proposed action and DEIS can be answered by David W. Heicher, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, NY 14207, telephone 716/876–5454 (FTS 473–2171).

Dated: September 4, 1984.

**Robert R. Hardiman,**

*Colonel, Corps of Engineers, District Commander.*

[FR Doc. 84–23977 Filed 9–10–84; 8:45 am]

BILLING CODE 3710–GP–M

## DEPARTMENT OF EDUCATION

### Intergovernmental Advisory Council on Education; Hearing

**AGENCY:** Department of Education.

**ACTION:** Notice of hearing.

**SUMMARY:** This notice sets forth the schedule of a hearing of the Intergovernmental Advisory Council on Education. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATE:** October 5, 1984.

**ADDRESS:** U.S. Department of Education, 1200 Main Tower Building, Room 1130, Dallas, Texas 75202.

**FOR FURTHER INFORMATION CONTACT:** Laverne Johnson, Intergovernmental Advisory Council on Education, Department of Education, 300 7th Street SW., Room 513, Washington, D.C. 20202 (202) 472-6464.

**SUPPLEMENTARY INFORMATION:** The Intergovernmental Advisory Council on Education is established under Section 213 of the Department of Education Organization Act (20 U.S.C. 3423). The Council was established to provide assistance and make recommendations to the Secretary and the President concerning intergovernmental policies and relations pertaining to education.

The Intergovernmental Advisory Council on Education will conduct a Public Hearing on October 5, 1984. The hearing schedule is as follows:

9:30 a.m.—Educational Partnerships
11:00 a.m.—Student Achievement and Discipline
2:00 p.m.—Higher Education Reauthorization Proposals
3:30 p.m.—Press Availability

Individuals, organizations, and associations need to register for the October 5 hearing. To register due to limited space and time, write or call Ms. Laverne Johnson, Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202, (202) 472-6464. (Testifiers will be limited to five (5) minutes. Each testifier must provide written comments. Those wishing to submit comments only may do so by mailing them to Ms. Johnson.)

Records are kept of all Council proceedings and are available for public inspection at the Office of the Intergovernmental Advisory Council on Education, 300 7th Street SW., Room 513, Washington, D.C. 20202.

Signed at Washington, D.C., on Wednesday, September 5, 1984.

A. Wayne Roberts,

*Deputy Under Secretary for Intergovernmental and Interagency Affairs.*

[FR Doc. 84-23976 Filed 9-10-84; 8:45 am]

BILLING CODE 4000-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-59165A; FRL-2667-5]**

## Certain Chemicals; Approval of Test Marketing Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of two applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-71 and TME-84-72. The test marketing conditions are described below.

**EFFECTIVE DATE:** August 30, 1984.

**FOR FURTHER INFORMATION CONTACT:** Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, DC 20460 (202-382-3739).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-71 and TME-84-72. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, number of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection and copying by EPA in accordance with section 11 of TSCA.

1. The applicant must maintain records of the quantity of each TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

### TME 84-71

*Date of Receipt:* July 19, 1984.

*Notice of Receipt:* July 27, 1984 (49 FR 30241).

*Applicant:* Confidential.

*Chemical:* (G) Mixed polymer of acrylates and methacrylates.

*Use:* Industrial coating (open use).

*Production Volume:* 1540 kg.

*Number of Customers:* One.

*Worker Exposure:* Manufacturing will occur for 12 hours over a two day period, during which up to 10 workers may be dermally exposed to low levels of the TME substance over 2 hour periods. Up to 11 workers may process the substance for up to 8 hours per day. Dermal exposure to these workers is not expected to be significant. Use will occur over a 125 day period and involve 2 to 4 workers for 8 hours per day. These workers may be dermally exposed to low levels of the substance. They may also be exposed through inhalation to up to 12 mg/day. Workers in all operations are required to wear the protective equipment specified in the test market application.

*Test Marketing Period:* Six months.

*Commencing on:* August 30, 1984.

*Risk Assessment:* No significant health concerns were identified. Based on analogous chemicals, EPA has identified some concern for ecotoxicity. However, no significant releases of the substance to the environment are anticipated. The test marketing substance will not pose any unreasonable risk of injury to health or the environment.

*Public Comments:* None.

### TME 84-72

*Date of Receipt:* July 19, 1984.

*Notice of Receipt:* July 27, 1984 (49 FR 30241).

*Applicant:* Confidential.

*Chemical:* (G) Aklyl diamine.

*Use:* (G) Epoxy reactant.

*Production Volume:* Confidential.

*Number of Customers:* Two.

*Worker Exposure:* Confidential.

*Test Marketing Period:* Nine months.
*Commencing on:* August 30, 1984.
*Risk Assessment:* The TME substance is acutely toxic and severely irritating based on test data submitted in the test marketing application. Potential chronic health effects were identified based on observations in the acute toxicity study. The substance may also be toxic to some aquatic organisms based on analogy to substances of similar structure. However, human and environmental exposures are not expected to be significant under the test marketing conditions. Worker exposure during manufacturing and processing of the test market substance is expected to be low and of short duration. Workers are required to wear protective equipment including gloves, respirators, and eye goggles or fact shields, as specified in the test market application and the material safety data sheet. The type of use precludes significant worker exposure. No significant environmental releases of the substance are anticipated. The test marketing substance will not pose any unreasonable risk of injury to health or the environment.
*Public Comments:* None.
The agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: August 30, 1984.

**Don R. Clay,**

*Director, Office of Toxic Substances.*

[FR Doc. 84-23921 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

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[OPTS-59132D; FRL-2667-4]

## Isocyanate-Reactive Prepolymers; Extension of Test Marketing Exemption Periods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is extending the test marketing exemption periods for an additional one-year for test marketing exemptions (TMEs) TM-83-73 and 83-74 under the authority of section 5(h)(1) of the Toxic Substances Control Act (TSCA). The test marketing exemptions were granted for a one-year period commencing on August 26, 1983. A Notice of Approval was published in the Federal Register of September 7, 1983 (48 FR 40439).

**EFFECTIVE DATE:** August 23, 1984.

**FOR FURTHER INFORMATION CONTACT:** Rose Allison, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M Street SW., Washington, D.C. 20460 (202-382-3739).

**SUPPLEMENTARY INFORMATION:** Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA 90 days before manufacture or import begins. Section 5(h)(1) authorizes EPA, upon receipt of an application, to exempt any person from the notice requirements of section 5 and to permit them to manufacture a new chemical substance for test marketing purposes. EPA may impose restrictions on the test marketing activity, including a limit on the time period during which it may take place.

On August 26, 1983, EPA granted test marketing exemptions (TM-83-73 and 74) for isocyanate-reactive prepolymers (generic description). The specific chemical identity and specific use is confidential business information. Notice of approval of the TMEs was published in the Federal Register of September 7, 1983 (48 FR 40439). Approval was based on an Agency finding that, under the conditions set out in the application, the test market substances did not present an unreasonable risk of injury to health or to the environment. Overall concerns for health and environmental effects were low. Minimal human exposure and environmental release is expected. The test marketing activity was limited to one year. On June 5, 1984, EPA received a request from the submitter to extend the test marketing period for an additional one year. The applicant states that only small amounts of the anticipated test market materials have been sampled because the development and penetration of this market is a relatively long process. The applicant states that this is at least partly due to the fact that customers of the TME substances must make structural changes to equipment in order to test market the substances. The applicant further states that an additional year is needed in order to complete field trials. Field trial schedules depend on the customers' production schedules. Once field trials are completed the final products must be tested by the customer for improved performance.

EPA has decided to extend the exemption periods by an additional one year, provided that all other restrictions specified in the notice of approval of the test marketing exemptions remain unchanged. These include recordkeeping requirements, limit on production volumes as originally specified, and worker protection measures. This decision is based on a finding that the additional time will not affect the Agency's original conclusion that test marketing of these substances will not present an unreasonable risk of injury to human health or the environment. The Agency reserves the right to rescind its decision to grant these extensions should any new information come to its attention which casts significant doubt on this conclusion.

Dated: August 23, 1984.

**Edwin F. Tinsworth,**

*Deputy Director, Office of Toxic Substances.*

[FR Doc. 84-23922 Filed 9-10-84; 8:45 am]

BILLING CODE 6560-50-M

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## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket No. 84-841, et al.; File No. BPCT-830818KG, et al.]**

## Retherford Publications, Inc. et al.; Memorandum Opinion and Order

Adopted: August 30, 1984.
Released: September 6, 1984.

In re applications of Retherford Publications, Inc., (MM Docket No. 84-841; File No. BPCT-830818KG); Craig Fox, George and Russell Kimble, a partnership d/b/a Jamestown TV Associates (MM Docket No. 94-842; File No. BPCT-831018KM); for construction permit for new TV station, Channel 26, Jamestown, New York.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it: (1) The above-captioned mutually exclusive applications of Retherford Publications, Inc. (Retherford) and Craig Fox, George Kimble and Russell Kimble, a partnership dba Jamestown TV Associates (JTA) for authority to construct a new television station on Channel 26, Jamestown, New York; (2) petitions to deny the above applications filed by Western New York Public Broadcasting Association (Association), licensee of noncommercial educational Station WNED-TV, Channel 17, Buffalo, New York, and Board of Cooperative Educational Services of Chautauqua County, New York (BOCES), licensee of translator station W26AA, Jamestown, New York [1]; and (3) related pleadings.

[1] Station W26AA operates on Channel 26, Jamestown, New York, and carries the programming originated by WNED-TV.

2. Association and BOCES claim standing as parties in interest on the basis that grant of either application would require modification or termination of the BOCES translator service because of the protection from electrical interference which must be accorded to television stations by television translators. Further, the petitioners claim standing on the basis that grant of either application will have an adverse economic impact upon the continued operations of WNED–TV, Buffalo, in that its programming is rebroadcast on the BOCES translator station serving Jamestown and vicinity. It is maintained that because its membership is relied upon for financial contributions, the loss of the translator service and viewership on Channel 26 will cause the Association to lose membership contributions. The petitioners' standing is not challenged and we find that they have standing to file the petitions to deny. *See International Broadcasting Co.*, 3 FCC 2d 449, 450 (1966).

**The Pleadings**

3. *The Petitions to Deny.* As an initial matter, the petitioners note that the same transmitter site was specified by each applicant and that neither has contacted the owner of that site to obtain permission for its use. Moreover, the petitioners contend that the engineering sections contained within these applications and calculated on the basis of the sites proposed are so technically deficient that any meaningful assessment of their technical proposals is prevented, thus raising additional questions as to whether the proposals constitute an inefficient use of the frequency. Specifically, it is alleged that Retherford proposes to locate its antenna at the same height on an existing tower that is occupied by the antenna of Station WWSE(FM), Jamestown, without addressing the probable deleterious effect that would result.[2] The petitioners further state that JTA's specified antenna location is at a site already occupied by the BOCES facilities pursuant to a long-term lease which it intends to retain and utilize. Moreover, it is alleged that JTA substantially exaggerates its proposed coverage and that to correct this inaccuracy would entail a major change in its proposal.[3] For these reasons alone, the petitioners urge that the applications be denied or designated for hearing.

4. Although the petitioners acknowledge that operation of a translator service on a commercial television channel is secondary in nature under the Commission's translator policies, they argue that the normal presumption favoring a full-service operation on that channel is unwarranted and contary to the public interest. Invocation of that presumption and the elimination of the existing translator service on Channel 26, they maintain, would not only have an adverse economic impact on WNED–TV and public broadcasting in the area, but also would deprive the citizens of Chautauqua County of their only source of in-state public broadcasting. Thus, the petitioners submit that it is incumbent upon these applicants to set forth a "realistic alternative" which would assure continuation of the program service currently offered by the Channel 26 translator operation. The absence of such a programming commitment, they argue, would be contrary to the public interest because a grant of either application would significantly reduce the diversity of local programming and eliminate public broadcasting programming for which there is no substitute.[4]

5. Both applicants filed oppositions to the petitions to deny. They maintain that they have reasonable assurances of obtaining the transmitter site specified in their applications. Retherford has attached to its pleading a copy of a memorandum of its consulting engineer to the effect that it received permission on October 21, 1983 from a Mr. Larson of WWSE(FM) to use that station's tower coordinates in its application. Thus, it contends that the petitioners' site availability allegations are moot. JTA has also submitted a letter from Mr. Larson to the effect that they also received his verbal permission to specify the WWSE(FM) transmitter site and maintains that the technical figures used in its application were those given them by WWSE(FM)'s Chief Engineer. Further, JTA states that if its transmitter site or antenna location should prove technically infeasible, it will promptly amend the application accordingly.

6. The applicants also disagree with the petitioner's assertions that grant of either application for a full-service commercial television station in Jamestown is contrary to the public interest. They essentially maintain that translator stations operating on allocated channels are secondary in nature and are subject to pre-emption upon the program test of a full-service television operation on such channels. JTA in particular stresses that in its desire to provide Jamestown with its first commercial television service, it has no choice but to apply for Channel 26. In so doing, it maintains that it does not intend to eliminate the public broadcasting service currently offered by the Channel 26 translator and, further, it disagrees that a grant of its application would preclude continuation of that service. JTA points out that other channels, including Channel 46 which is allocated to Jamestown and is reserved for educational use, are available for use as an independent full-service station or as a satellite operation similar to other educational stations in New York.[5]

7. *Discussion.* Section 74.702(b) of the Commission's Rules essentially requires the termination of a translator's operations or a change in the translator's output channel when a full-service station is activated on the allocated channel. The fact that a translator operation is secondary in nature and that the Commission has recognized that the public interest favors primary over secondary services is basically not in dispute here. Channel 26 was allocated to Jamestown in order to enable us to authorize that community's only local commercial television station. That allocation represents an implicit determination

[2] The petitioners also assert that Retherford's technical showing: (1) Contains discrepancies in terrain data and questionable service contour calculations; (2) refers to exhibits purporting to contain topographic maps which are, in fact, not included in the application; and (3) omits the dated signature of its technical consultant.

[3] The petitioners maintain that JTA's coverage proposal is unreliable because: (1) The use of an erroneous proposed tower height resulted in a miscalculation of the proposed antenna's center of radiation and an incorrect projection of its Grade B signal contour; and (2) an incorrect antenna pattern was used in plotting its proposed signal contours.

[4] The petitioners observe that moving the translator operation to another channel allocated to Jamestown is unlikely. Channel 26 is the only channel allocated for commercial television use in Jamestown. Channel 46, which is reserved for educational use, is also allocated to Jamestown and is currently used by BOCES as a hub translator, rebroadcasting the programming of WNED–TV and retransmitting that programming to other translator stations throughout the area. That translator is located at Kelly Hill in Centralia, New York, outside the community intended to be served by the Channel 46 allocation. It is argued that because the outlying translator facilities licensed to BOCES are wholly dependent upon the rebroadcast of WNED–TV via the Channel 46 translator, utilization of that channel to replace the current Channel 26 translator operation is not feasible.

[5] The petitioners submitted a reply to Retherford's opposition alleging that it ignores the public interest questions raised in the petition. Further, they maintain that the memorandum of Retherford's consulting engineer stating that verbal assurances to specify the transmitter site were received by WWSE (FM) on October 21, 1983, approximately three months after the application was filed and subsequent to the filing of the petition to deny. Therefore, they argue that the allegations raised in this regard are not moot. The petitioners did not reply to JTA's pleading.

that the public interest is better served by a full-service television station than by a translator operating on the channel. The petitioners' assertions that the programming currently offered on the Channel 26 translator requires the denial of these competing applications or obligates these applicants to assure continuation of that program service is unpersuasive and, in any event, does not justify depriving Jamestown of its only local full-service commercial television station in order to permit a translator, at best a tenant at sufferance, to remain on the channel and rebroadcast a distant station. The petitioners' assertions that the operation of a full-service station on Channel 26 will effectively terminate public broadcasting to the citizens of Chautauqua County is not persuasive. The petitioners have not shown why the present Channel 26 translator operation cannot be moved to Channel 46, also allocated to Jamestown and reserved for educational use, either as a full-service or satellite operation.[6] Further, and more significantly, translator operations are not limited to allocated channels, and so long as it does not result in any prohibited interference, any channel may be used for a translator operation. Although the Commission has imposed a freeze on applications for new translators, as well as for major changes in existing translators, special temporary authority will be granted to continue a displaced translator service. The petitioners' contention that both channels allocated to Jamestown remain unchanged because of their present translator service would require that we allow both Jamestown allocations to be reserved for translators indefinitely, effectively precluding the operation of *any* full-service television operation as contemplated by the allocation of these channels. That this would be a grossly inefficient use of the broadcast spectrum is beyond dispute. It is obvious that either applicant's proposal would serve a vastly greater area and substantially more people than does the translator.[7]

[6] The petitioners' suggestion that it is not feasible to move to Channel 46 because of its current use as a hub translator is similarly unpersuasive. That analysis fails, for example, to take into account that the function of that hub translator, retransmitting the programming of WNED–TV to other translator stations in the area, can be achieved by the use of microwave relay stations.

[7] The petitioners knew, or should have known, when BOCES applied for a translator on Channel 26 in Jamestown, it could be displaced by a full-service station operating on the channel. With the realization of that possibility at hand, engineering studies should now be undertaken to make such changes in the BOCES translator system as may be necessary to vacate Channel 26 in Jamestown in the event that one of these applications is granted.

8. With respect to the allegation that the loss of the Channel 26 translator will cause the Association's Buffalo station, WNED–TV, to lose thousands of dollars in membership contributions due to the loss of viewership in Jamestown, the petitioners have failed to make a *prima facie* showing that the economic consequences of a grant of either application will lead to an overall diminution of service to the public. *See WLVA, Inc.* v. *F.C.C.*, 459 F.2d 1286 (D.C. Cir. 1972). First, as previously noted, we disagree with the petitioners' fundamental premise that a grant of either application necessitates the termination of the translator service currently offered on Channel 26. The allegations to that effect are, nevertheless, speculative and unpersuasive. The petitioners have not offered any analysis relating any projected revenue loss to specific programming or operational expenses and they have otherwise failed to establish the nature of the purported derogation of service that would result from an unspecified loss of revenue. In short, no evidence has been presented to indicate that the economic viability of WNED–TV would be threatened and, in view of the alternatives available to continue the translator service currently operating on Channel 26, we believe no significant economic impact need result by a grant of either application.

9. As to the availability of the proposed transmitter site, each applicant proposes to mount its antenna on an existing tower which radio station WWSE(FM) now occupies and each applicant claims to have received that station's permission to specify that site. However, in the letter submitted by JTA evidencing that it did receive permission to specify the WWSE(FM) tower site, it is stated that WWSE(FM) is only a tenant on the tower, not the property owner. The Commission has held that although an applicant need not have a binding agreement or absolute assurance of the availability of a proposed site, an applicant must show that it has obtained reasonable assurance that its proposed site is available. Some indication by the *property owner* that he is favorably disposed toward making an arrangement is necessary. *William F. Wallace*, 49 FCC 2d 1424, 1427 (1974). Accordingly, an issue will be specified against each applicant as to the availability of a site.

10. Moreover, a misrepresentation issue will be added against each applicant. The specification of a site is an implied representation that an applicant has obtained reasonable assurance that the site will be available. According to the letter from Mr. Larson of WWSE(FM), submitted with its pleading, JTA was informed by him at the time that permission was sought to use the transmitter site that the radio station was only a tenant on the tower and not the landlord. Therefore, although JTA received verbal permission to specify the WWSE(FM) tower site, it did not have reasonable assurance from the property owner that its proposed site was available. With regard to Retherford, there is nothing to indicate that it contacted the property owner to obtain reasonable assurance that its proposed site would be available. In fact, the memorandum of its consulting engineer stating that verbal assurance to specify the transmitter site was received on October 21, 1983 would only compound any misrepresentation. Even assuming that WWSE(FM) had the authority to give Retherford the requisite assurance of the availabiliy of the proposed site, that permission was not sought until after the filing of both its application and the petition to deny. A failure to inquire as to the availability of the site unit after the application is filed is inconsistent with the applicant's implied representation of site availability. *ID. See also Lake Erie Broadcasting Co.*, 31 FCC 2d 45, 46 (1971).

11. The specification of a site availability issue, however, does not lead to the conclusion that the applicant's technical showings are so flawed as to require dismissal of their applications. It is not necessary at this time to determine whether these applications are sufficient to demonstrate that either applicant is fully qualified; that an application may be acceptable for filing and yet not demonstrate the requisite qualifications to justify a grant is well established. Section 73.3564 of the Commission's Rules; *Central Florida Enterprises, Inc.*, 22 FCC 2d 260, 263 (1970). Alleged deficiencies of the nature set forth by the petitioners, and discussed *infra*, are fairly typical of the many applications for construction permits that are routinely accepted for filing and later corrected by amendment. Staff review of Retherford's application indicates that while some discrepancies do exist, see paragraphs 12, 13 and 14 *infra*, the applicant's technical showing contains the required terrain and topographic information with sufficient accuracy to enable us to determine, assuming the availability of the proposed site, that its

contour calculations are adequate.[8] With respect to JTA, and again assuming the availability of the proposed site, the proper antenna pattern was used to plot its proposed signal contours and there is no problem or discrepancy regarding the overall tower height. However, there is not enough information available for us to determine what height is available on the tower for mounting its antenna. See paragraph 14, *infra*. However, because these applications were substantially complete when filed and meet our criteria for acceptance, we find that dismissal based on these allegations is unwarranted.

**Retherford's Application**

12. If there are any FM or television stations within 200 feet of the proposed antenna which may be adversely affected by the proposed operation, Section V–C, item 14, FCC Form 301, requires an applicant to provide an exhibit addressing the expected effect, a description of remedial steps which may be pursued and a statement from the applicant accepting full responsibility for the elimination of any objectionable effect on existing stations. Assuming that Retherford's proposed site is available, its response to Section V–C, item 14 ("N/A") is inconsistent with its response to Section V–G, item 2, wherein it is stated that its proposed site is the same transmitter-antenna site of WWSE(FM). Accordingly, Retherford will be required to submit an amendment providing the exhibit and statement required by Section V–C, item 14, within 20 days after this Order is released, to the presiding Administrative Law Judge.

13. Section V–G, item 10, FCC Form 301, requires that an applicant submit figures for the area and population within its predicted Grade B contour. Retherford has not submitted figures for the population. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and pouplation that each applicant proposes to serve. Retherford will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding administrative Law Judge who will consider any significant difference in the areas and populations served under the standard comparative issue.

**The Competing Applications**

14. Section V–G, item 6, FCC Form 301, requires that an applicant provide a vertical plan sketch for the total structure of the proposed tower. Among other things, that sketch should include the heights above ground in feet for all significant features and distinguish between the skeletal structure and the antenna elements. In the vertical plan sketches submitted with their applications, neither applicant provided the height, location or mounting of the W26AA antenna on that tower. As a result, we are unable to determine whether there is space on that tower, assuming its availability, for the proposed antenna at the height indicated by each applicant. Moreover, if the W26AA antenna is top mounted on that tower, it appears that the indicated heights at which each applicant proposes to side mount its antenna may not be available. Therefore, each applicant will be required to submit a vertical plan sketch containing all the information called for, within 20 days after this Order is released, to the presiding Administrative Law Judge. If, in the preparation of this vertical plan sketch, it is determined that the height specified in their applications is unavailable, that amendment should include new height above average terrain and signal contour calculations as appropriate.

15. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

16. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to each of the applicants, whether there is reasonable assurance that its specified transmitter site will be available.

2. To determine, with respect to each of the applicants, whether a misrepresentation was made proposing a transmitter site without having made adequate inquiries as to its availability, and if so, the effect upon that applicant's basic and/or comparative qualifications to be a broadcast licensee.

3. To determine which of the proposals would, on a comparative basis, better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

17. It is further ordered, That Retherford Publications, Inc., shall submit an amendment providing the exhibit and statement required by Section V–G, item 2, FCC Form 301, and stating the population within its predicted Grade B contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

18. It is further ordered, That each applicant shall submit an amendment providing the information required by Section V–G, item 6, FCC Form 301, consistent with our discussion in paragraph 14, *supra*, within 20 days after this Order is released, to the presiding Administrative Law Judge.

19. It is further ordered, That the petitions to deny filed by Western New York Public Broadcasting Association, and Board of Cooperative Educational Services of Chautauqua County, New York, are granted to the extent indicated herein and otherwise are denied.

20. It is further ordered, That Western New York Public Broadcasting Association, and Board of Cooperative Educational Services of Chautauqua County, New York, are made parties respondent in this proceeding.

21. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the parties respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

[8] With respect to the petitioners' allegation that Retherford's technical showing did not include the dated signature of its technical consultant, we note that it did include the required signature and the application does not require that it be dated.

Federal Communications Commission.

Roy J. Stewart,

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 84-23953 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

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**[MM Docket No. 84-836, et al.; File No. BPCT-840406KE, et al.]**

## Darrel Silvey and Richard Towe, d/b/a Silvey-Towe Television, et al.; Hearing Designation Order

In re applications of Darrel Silvey and Richard Towe, d/b/a Silvey-Towe Television, (MM Docket No. 84-836, File No. BPCT-840406KE); Philip B. George, (MM Docket No. 84-837, File No. BPCT-840521KE); Cleveland Community Television, Ltd., (MM Docket No. 84-838, File No. BPCT-840524KE); Cleveland Television, Ltd., (MM Docket No. 84-839, File No. BPCT-840530KG); WFLI, Inc., MM Docket No. 84-840, File No. BPCT-840530KM; for construction permit for new television station, Cleveland, Tennesse.

Adopted: August 27, 1984.

Released: September 5, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 53, Cleveland, Tennessee.

2. Except with respect to Philip R. George, no determination has been reached that the tower height and location proposed by each of the applicants would not constitute a hazard to air navigation.[1] Accordingly, an issue regarding this matter will be specified.

3. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of 64 dBu (Grade B) or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. Section 73.610 of the Commission's Rules requires a minimum separation of 175 miles between a station in Zone II and a station or city to which the same channel (co-channel) is allocated. Cleveland Community Television Ltd.'s (CCTL) proposed site would be 172 miles from co-channel educational television station WKGB (TV), Bowling Green, Kentucky. CCTL would, therefore, be short-spaced 3 miles and it has requested a waiver of the rule. An issue will be specified to determine whether circumstances exist warranting a waiver. In assessing those circumstances, the presiding Administrative Law Judge should consider the fact that the other applicants have specified sites which comply with the separation requirements.

5. In the pending rulemaking proceeding in Docket No. 84-713, the Commission proposes to allocate channel 53 to Macon, Georgia. The transmitter site proposed by WFLI, Inc. would be 147 miles northwest of the city reference coordinates in Macon, but the rulemaking proposal envisions a site-restricted Channel 53 reference point 9.5 miles southeast of Macon. If that proposal is adopted, WFLI's transmitter site would be 156 miles from the site-restricted reference point, whereas § 73.610 of the Commission's Rules requires a minimum separation of 175 miles between co-channel stations or a reference point in Zone II. WFLI would, therefore, be short-spaced 19 miles to the site-restricted reference point and would require any Macon applicant that meets the minimum separation requirement to be at least 28 miles outside of Macon. An issue would then be required to determine whether circumstances exist which would warrant a waiver of the rule. In assessing those circumstances to determine whether a waiver would be warranted, the presiding Administrative Law Judge would consider the fact that the other applicants have specified sites which would comply with the separation requirements. Accordingly, a contingent issue with respect to WFLI, Inc.'s possible short-spaced proposal will be specified. *Delaware Valley Television, Ltd.*, mimeo number 4088, released May 11, 1984 (Channel 48, Burlington, New Jersey). In the event of a grant of the application of WFLI prior to the termination of the rulemaking proceeding in Docket No. 84-713, the construction permit will be made subject to the outcome of the rulemaking proceeding.

6. Section 73.3555(b)(1) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities "* * * will by handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." WFLI, Inc. is the licensee of radio station WFLI(AM), Lookout Mountain, Tennessee. Lookout Mountain would be within the Grade A contour of the proposed television station. Accordingly, an issue will be specified to determine whether WFLI, Inc.'s common ownership, operation and control of the AM station and the proposed television station would be consistent with the public interest.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to each of the applicants (except Philip R. George), whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Cleveland Community Television Ltd., whether the proposal is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

3. To determine with respect to WFLI, Inc.:

(a) In the event the Commission adopts the pending rulemaking proposal in Docket No. 84-713 and allocates Channel 53 to Macon, Georgia, whether circumstances exist which would warrant a waiver of § 73.610 of the Commission's Rules; and

(b) whether common ownership, operation, or control of WFLI(AM), and

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[1] Philip B. George has recived a determination from FAA that the tower height and location proposed would not constitute a hazard to air navigation.

the proposed television station would be in the public interest.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That in the event of a grant of the application of WFLI, Inc. the construction permit will be subject to the following condition:

Subject to the outcome of the rulemaking proceeding in Docket No. 84-713.

11. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communication's Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart, Chief,

*Video Services Division, Mass Media Bureau.*

[FR Doc. 84-23954 Filed 9-10-84; 8:45 am]

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[MM Docket No. 84-830, et al.; File No. BRTT-830201IK, et al.]

## Application for Construction Permits and Renewal of Licenses; Spanish International Communications Corp. and Seven Hills Television Co.

Order

Adopted: August 28, 1984.
Released: August 31, 1984.

By the Chief, Mass Media Bureau.

In re applications of Spanish International Communications Corp. for renewal of license of: W35AB, Philadelphia, Pennsylvania; MM Docket No. 84-830; File No. BRTT-830201IK; for license to operate: K39AB, Bakersfield, California; MM Docket No. 84-831; File No. BLTT-810209IM; for construction permit: K30AK, Austin, Texas; MM Docket No. 84-832; File No. BPTTL-830829IA; W47AD, Hartford, Connecticut; MM Docket No. 84-833; File No. BPTT-840308IL; K41AI, Denver, Colorado; MM Docket No. 84-834; File No. BPTTL-830519DB; The Seven Hills Television Co. for construction permit: K52AO, Tucson, Arizona; MM Docket No. 84-835; File No. BPTT-840308IQ.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-referenced television translator and low power television applications of Spanish International Communications Corporation (SICC) and The Seven Hills Television Company (Seven Hills).

2. On May 26, 1983, the Commission issued a *Memorandum Opinion and Order* designating for hearing the renewal applications of six full service television stations licensed to SICC or to corporations controlled by television stations licensed to SICC or to corporations controlled by principals of SICC. *Spanish International Communications Corporation*, MM Docket Nos. 83-540 to 83-545, FCC 83-263, released June 16, 1983. Subsequently, the Chief, Mass Media Bureau, designated for consolidated hearing with the above proceeding the renewal application of Seven Hills, licensee of full service television station KTVW-TV, Phoenix, Arizona, as Seven Hills is controlled by principals of SICC. *The Seven Hills Television Company*, MM Docket No. 83-657, Mimeo No. 5214, released July 12, 1983. Among the issues to be explored in that consolidated proceeding is whether SICC or its controlled licensees are in violation of the alien ownership proscriptions of section 310(b) of the Communications Act of 1934, as amended.

3. The Commission concluded in *Spanish International Communications Corporation, supra*, that the public interest would also be served by the designation for hearing of six television translators licensed to SICC (W35AB, Philadelphia, Pennsylvania; K39AB, Bakersfield, California; K42AB, Austin, Texas; W61AH, Hartford, Connecticut; KA2XEG, Denver, Colorado) and Seven Hills (K40AC, Tucson, Arizona). To that end, the Commission authorized the Chief, Mass Media Bureau, to designate those television translator applications for consolidated hearing with the other SICC and Seven Hills full service renewal applications in the aforementioned proceeding. *Id.*, at para. 7.

4. A clarification of the status of those stations follows. W35AB presently is licensed and has a renewal application pending before the Commission. SICC operates station K39AB as a construction permit under program test authority pursuant to § 74.14(b) of the Commission's Rules. A pending license application has not been granted because of the proceedings involving SICC. Stations K42AB, W61AH and K40AC were in the same posture as K39AB, operating under program test authority. However, SICC was compelled to apply for frequency changes for these three stations due to the commencement of full service television operations on their channels. These frequency changes were in each case a major change in facilities under § 73.3572(b) of the Commission's Rules, necessitating new file numbers and exposure to possible competing applications through our cut-off and lottery procedures. In order to preserve existing service to the public, SICC was granted special temporary authority (STA) to operate these stations on the new channels in accordance with their pending applications. Consequently, K42AB is now K30AK; W61AH is now W47AD; and K40AC is now K52AO, as referenced in the caption. Finally, KA2XEG was licensed to SICC as an experimental operation on June 30, 1980, and broadcast on Channel 31. SICC was also forced to seek a channel change for KA2XEG by the sign-on of a full service television station, and submitted the above-captioned application on May 19, 1983, proposing to operate on Channel 41 as a low power television station. SICC received an STA to operate on Channel 41 on June 8, 1983, and was assigned call sign K41AI. Although the underlying application was returned on October 21, 1983, and reconsideration was denied on May 7, 1984, by the Chief, Low Power Television Branch, for being untimely filed against a complex chain of cut-off applicants, K41AI continues to operate by STA pending disposition of its recent application for review by the Commission.[1]

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[1] The applications of K30AK, W47AD, and K52AO are mutually exclusive with a large number of other applications in daisy chains common in low power television and television translator application processing. They will continue to be routinely processed and evaluated under our strict application processing standards, since failure to process them would result in pointless delay to the processing of the chains with which they are involved. If a lottery is held with these and other mutually exclusive applications, and the SICC applications are not selected, the Administrative Law Judge will be informed of the result. Should any of these SICC applications become tentative selectees in a lottery, final grant of their construction permits will await the outcome of this proceeding. If the application for review of the dismissal of Station K41AI's underlying application is granted, it will be processed in the same manner.

5. Accordingly, it is ordered, That the captioned applications are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, at the time and place specified in the *Order*, FCC 84M–2775, released June 20, 1984, upon the issues set forth in *Spanish International Communications Corporation, supra,* and *The Seven Hills Television Company, supra.*[2]

6. It is further ordered, that the Secretary of the Commission send a copy of this Order by Certified Mail-Return Receipt Requested to Spanish International Communications Corporation, The Seven Hills Television Company, and the Spanish Radio Broadcasters Association.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 84–23946 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

## Sunbelt Television, Inc., et al., Erratum

In re applications of Sunbelt Television, Inc. (MM Docket No. 84–810, File No. BPCT–840118KE) and William R. Stinchcomb and Greg S. Carpenter, A General Partnership, (MM Docket No. 84–811 File No. BPCT–840119KI) for construction permit for a new TV station Barstow, California.

Released: August 29, 1984.

The Hearing Designation Order in the above entitled proceeding released August 22, 1984, Mimeo #6141 (49 FR 34301, August 29, 1984) is corrected to change Channel 44 in Paragraph 1 to Channel 64.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 84–23950 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

## Telecrafter Corp. and Raleigh Microwave Communications; Memorandum Opinion and Order

In re applications of Telecrafter Corp., (CC Docket No. 84–821 File No. 50160–CM–P–82) and, Raleigh Microwave Communications (CC Docket No. 84–822 File No. 50230–CM–P–82) for construction permits in the multipoint distribution service for a new station at Klamath Falls, Oregon.

Adopted August 21, 1984.
Released August 23, 1984.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Klamath Falls, Oregon. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications shoud be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Telecrafter Corporation, Raleigh Microwave Communications and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appedarance in accordance with the provisions of 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

**James R. Keegan,**

*Chief, Domestic Facilities Division, Common Carrier Division*

[FR Doc. 84–23952 Filed 9–10–84; 8:45 am]

BILLING CODE 6712–01–M

## Telecrafter Corp. and Mid-Nebraska Telecommunications, Inc.; Memorandum Opinion and Order

In re applications of Telecrafter Corp., (CC Docket No. 84–819 File No. 50181–CM–P–82) and Mid-Nebraska Telecommunications, Inc., (CC Docket No. 84–820 File No. 50282–CM–P–82) for construction permits in the multipoint distribution service for a new station at North Platte, Nebraska.

Adopted August 21, 1984.
Released August 23, 1984.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at North Platte, Nebraska. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in

[2] Since the captioned applicants have been served with a Bill of Particulars upon the identical issues in their full service renewal proceedings, additional service of a Bill of Particulars in this proceeding is unnecessary.

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Telecrafter Corporation, Mid-Nebraska Telecommunications, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

**James R. Keegan,**

*Chief, Domestic Facilities Division, Common Carrier Division.*

[FR Doc. 84-23948 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

## United Telespectrum, Inc. and St. John Cooperative Telephone & Telegraph Co.; Order Designation Applications for Hearing

In re applications of United Telespectrum, Inc., (CC Docket No. 84-823, File No. 20385-CD-P-84) for a construction permit for a new one-way station to operate on frequency 158.10 MHz for station KNKC 278 in the public land mobile radio service at Spokane, Washington and, St. John Cooperative Telephone & Telegraph Co., (CC Docket No. 84-824) File No. 21480-CD-P-84, for a construction permit for additional one-way facilities to operate on frequency 158.10 MHz for station KNKB442 in the public land mobile service near Spokane, Washington.

Adopted August 21, 1984.

Released August 24, 1984.

By the Common Carrier Bureau.

1. On November 1, 1983, United TeleSpectrum, Inc. (United) filed an application for a new one-way station to operate on frequency 158.10 MHz at Spokane, Washington. The application was accepted for filing by Public Notice of November 16, 1983. St. John Cooperative Telephone & Telegraph Company (St. John) filed an application on freqeuncy 158.10 MHz for an additional one-way location for Station KNKB442 near Spokane, Washington, within 60 days of the public notice date of the United application. The applications have not been protested. Since St. John's application is for an additional facility, these applications are not subject to selection by lottery.

2. We find both applicants to be legally, technically, and otherwise qualified to construct and operate the proposed facilities. We further find that the proposals of United and St. John to use frequency 158.10 MHz in the same geographical area are electrically mutually exclusive; therefore, a comparative hearing will be held to determine which applicant would better serve the public interest.

3. Accordingly, it is ordered that the applications of United TeleSpectrum, Inc. and St. John Cooperative Telephone and Telegraph Company, File No. 20385-CD-P-84 and 21480-CD-P-84, are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area with 43 dBu contours,[1] based upon the standards set forth in Section 22.504(a) of the Commission's Rules [2] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the Commission's Rules within 30 days of the release date hereof a written notice stating an intention to appear on that date for a hearing and present evidence in the issues specified in the Memorandum Opinion and Order.

7. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the rules may be filed within 30 days of the date of public notice of this order (see Rule 1.4(b)(2)).

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

**Michael Deuel Sullivan,**

*Chief, Mobile Services Division, Common Carrier Bureau.*

[FR Doc. 84-23951 Filed 9-10-84; 8:45 am]

BILLING CODE 6712-01-M

[1] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[2] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

## FEDERAL HOME LOAN BANK BOARD

## Mitchell Home Savings and Loan Association, Mitchell, SD; Appointemnt of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Savings and Loan Insurance Corporation as sole receiver for Mitchell Home Savings and Loan Association, Mitchell, South Dakota, on August 29, 1984.

Dated: September 6, 1984.

**J.J. Finn,**

*Secretary.*

[FR Doc. 23908 Filed 9-10-84; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

## Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for

comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–053.

Title: American West African Freight Conference.

Parties:

America—Africa Line
Barber West Africa Line
Cameroon Shipping Line
Companhia Nacional de Navegacao
Farrell Lines, Inc.
Medafrica Line
Nigeria America Line, Ltd.
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed amendment would establish uniform procedures for invoking independent action procedures.

Agreement No.: 202–007680–054.

Title: American West African Freight Conference.

Parties:

America—Africa Line
Barber West Africa Line
Cameroon Shipping Line
Companhia Nacional de Navegacao
Farrell Lines, Inc.
Medafrica Line
Nigeria America Line, Ltd.
Societe Ivoirienne de Transport Maritime, SITRAM
Torm West Africa Line
Westwind Africa Line

Synopsis: The proposed amendment would clarify the agreement's prohibition of members or their agents representing non-conference vessels by defining an "associated or affiliated company" and would add operation of non-conference vessels to this restriction.

Agreement No.: 202–010045–012.

Title: U.S. South Atlantic & Gulf/Panama & Costa Rica Rate Agreement.

Parties:

Coordinated Caribbean Transport, Inc.
Concorde Lines
Seaboard Marine, Ltd.
Sea—Land Service, Inc.

Synopsis: The proposed amendment would prohibit any member, or anyone acting as its agent, from representing a competing carrier in the trade unless authorized by a majority vote of the parties and would prohibit any party from divulging the vote or content of discussions at meetings of the agreement except as required by law.

Agreement No.: 202–010105–010.

Title: U.S. South Atlantic & Gulf/Guatemala, Honduras & El Salvador Rate Agreement.

Parties:

Coordinated Caribbean Transport, Inc.
Concorde Lines
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment would prohibit any member, or anyone acting as its agent, from representing a competing carrier in the trade unless authorized by a majority vote of the parties and would prohibit any party from divulging the vote or content of discussions at meetings of the agreement except as required by law.

Agreement No.: 212–010286–003.

Title: Italy—U.S.A. North Atlantic Pool Agreement.

Parties:

Costa Line
Farrell Lines, Inc.
"Italia" S.p.A.
Jugolinija
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment provides that the pool period which began on September 1, 1983, shall terminate on April 30, 1985.

Dated: September 6, 1984.

By Order of the Federal Maritime Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 84–23934 Filed 9–10–84; 8:45 am]

BILLING CODE 6730–01–M

## Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

Dietrich Forwarding Corp., 186 South Street, Suite 200, Boston, MA 02111. Officers: James P. Mnookin, Chairman, Cindra Zambo, President.

Dated: September 6, 1984.

By the Federal Maritime Commission.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 84–23932 Filed 9–10–84; 8:45 am]

BILLING CODE 6730–01–M

## Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

| License No. | Name/address | Date revoked |
|---|---|---|
| 2550 | Johanna P. Linster, 14441 Cherrywood, Tustin, CA 92680. | Aug. 17, 1984 |
| 1618 | Gulf Coast Forwarding Co., Inc., 7601 Edna Street, Houston, TX 77087. | Aug. 26, 1984 |

**Robert G. Drew,**

*Director, Bureau of Tariffs.*

[FR Doc. 84–23935 Filed 9–10–84; 8:45 am]

BILLING CODE 6730–01–M

**[C.O. 1; Amdt. No. 6]**

## Organization, Functions and Delegations of Authority Bureau of Agreements and Trade Monitoring

The following delegation of authority is made to the Director, Bureau of Agreements and Trade Monitoring, to facilitate implementation of the Shipping Act of 1984.

Commission Order 1 is amended by adding the following new sub-sections 8.13 and 8.14 to Section 8 *Specific Authorities Delegated to the Director, Bureau of Agreements and Trade Monitoring:*

8.13 Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1) and to shorten the review period under section 6(e) of the Shipping Act of 1984 when the agreement or modification solely involves a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes for example the following: a restatement filed to conform an agreement to the format and organization requirements of 46 CFR Part 572; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement or a transfer of functions

from one person or committee to another.

8.14 Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act of 1984 after publication of notice of intent to terminate in the **Federal Register** when such terminations are (1) requested by the parties to the agreement; (2) deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or (3) deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

Dated: August 24, 1984.

**Alan Green, Jr.,**

*Chairman.*

[FR Doc. 84-23933 Filed 9-10-84; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

September 5, 1984.

**Background**

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under delegated OMB authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

**FOR FURTHER INFORMATION CONTACT:**

Federal Reserve Board Clearance Office—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3829)

OMB Desk Office—Judith McIntosh—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202-395-6880).

**Request for Extension With Revisions**

1. *Report title:* Change in Bank Control Form
*Agency form number:* FR 2081
*OMB Docket number:* 7100-0134
*Frequency:* On occasion
*Reporters:* State member banks
Small businesses are not affected.

*General description of report:*
Respondent's obligation to reply is mandatory (12 U.S.C. 1817(j)); a pledge of confidentiality is not promised unless the respondent can justify an exemption as per 5 U.S.C. 552.

The form is required by statute and is completed by persons proposing to acquire control of a bank holding company or a state member bank.

2. *Report title:* Report of Condition for Foreign Organizations Controlled by Member Banks, Edge and Agreement Corporations, and Bank Holding Companies
*Agency form number:* FR 2314
*OMB Docket number: 7100-0073*
*Frequency:* Quarterly
*Reporters:* Members banks, Edge and Agreement Corporations, and Bank Holding Companies
Small businesses are not affected.

*General description of report:*
Respondent's obligation to reply is mandatory (12 U.S.C. 324, 602, 605, and 1844(c)); a pledge of confidentiality is promised (5 U.S.C. 552(b)(8)).

This report provides the only source of comprehensive and systematic data on the assets and liabilities of foreign subsidiaries of U.S. banking institutions. The data are used to monitor the growth and activity of the subsidiaries and to supervise the overall operations of the parent institutions. The revisions made to this report are minor and reflect changes made to the U.S. commercial bank Reports of Condition and Income, which were effective beginning with the March 1984 reports.

Board of Governors of the Federal Reserve System, September 5, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-23918 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

### Deutsche Bank, et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1984.

**A. Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Deutsche Bank*, Frankfurt (Main), Federal Republic of German; to engage *de novo* through its subsidiary, Atlantic Capital Corporation, New York, New York, in providing a securities custodial service primarily to foreign financial institutions not doing brokerage business through Atlantic.

**B. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through Norwest Agencies, Inc., Minneapolis, Minnesota, in general insurance agency activities. It appears that these activities are permissible pursuant to sections 4(c)(8)(D) and 4(c)(8)(G) of the Bank Holding Company Act, as amended. These activities will be conducted in Two Harbors and Silver Bay, Minnesota, serving northeastern Minnesota.

Board of Governors of the Federal Reserve System, September 5, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-23916 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

**United Mizrahi Overseas Holding Company B.V., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requires a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 1, 1984.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United Mizrahi Overseas Holding Company B.V.*, Amsterdam, The Netherlands; to become a bank holding company by acquiring 51 percent of the voting shares of UMB Bank and Trust Company, New York, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Bancshares of Nelsonville, Inc.*, Nelsonville, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Huntington National Bank of Nelsonville, Nelsonville, Ohio.

2. *Peoples Financial Corp., Inc.*, Ford City, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank of Ford City, Pennsylvania, Ford City, Pennsylvania.

3. *The Sylvania BanCorp, Inc.*, Sylvania, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Sylvania Savings Company, Sylvania, Ohio.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank of Maringouin Holding Company, Inc.*, Maringouin, Louisiana; to become a bank holding company by acquiring 67 percent of the voting shares of Bank of Maringouin, Maringouin, Louisiana.

2. *B.B. Financial Corporation*, Boca Raton, Florida; to become a bank holding company by acquiring 90 percent of the voting shares of Boca Bank, Boca Raton, Florida.

D. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Bancorp, Inc.*, Salem, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Bank, Inc., Salem, Kentucky.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Chalfen Bankshares, Inc.*, Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Chalfen-Holiday, Inc., an existing one-bank holding company which owns 80.2 percent of the voting shares of the First National Bank of Anoka, Anoka, Minnesota. Comments on this application must be received not later than September 28, 1984.

1. *Drummond Bancshares, Inc.*, Drummond, Wisconsin; to become a bank holding company by acquiring 91.5 percent of the voting shares of State Bank of Drummond, Drummond, Wisconsin.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Aurora Bancorporation, Inc.*, Aurora, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Aurora Bank, Aurora, Colorado.

2. *The Banking Group LTD.*, Castle Rock, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Castle Rock, Castle Rock, Colorado.

Board of Governors of the Federal Reserve System, September 5, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-23917 Filed 9-10-84; 8:45 am]

BILLING CODE 6210-01-M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**Privacy Act of 1974; Matching Program—Federal, State and Local Government Personnel Records/ Social Security Beneficiary Records**

**AGENCY:** The Department of Health and Human Services.

**ACTION:** Notification of a Matching Program—Federal State and Local Government Personnel Records/Social Security Beneficiary Records.

**SUMMARY:** The Department of Health and Human Services is providing notice that the Office of Inspector General intends to conduct matches of federal, state and local government personnel records with Social Security benefit records. A matching report is set forth below.

**DATES:** These matches will begin in September, 1984.

**ADDRESS:** Send any comments to Office of Public Affairs, Office of Inspector General, Department of Health and Human Services, Room 5640, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

**FOR FURTHER INFORMATION CONTACT:** Richard McGowan, Public Affairs Officer, Office of Inspector General, Room 5640, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201 or call (202) 472-3142.

**SUPPLEMENTARY INFORMATION:** The Office of Inspector General has initiated a project to identify individuals receiving Social Security benefits who are subject to the government pension offset provisions of the Social Security Act. Set forth below is the information required by paragraph 5.f.1 of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget, 47 FR 21656 (May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Dated: August 31, 1984.

**Richared P. Kusserow,**

*Inspector General.*

**Report of Matching Program: Federal, State and Local Government Personnel Records/Social Security Beneficiary Records**

a. *Authority:* Pub. L. 94-505.

b. *Program Purpose and Description:* The Office of Inspector General plans to

match Office of Personnel Management records identifying federal retirees who have retired since November 1977 and selected state and local government personnel records against records identifing Social Security beneficiaries who receive Social Security benefits under title II of the Social Security Act as a spouse or surviving spouse. Raw hits will then be reviewed to determine whether the title II benefits are subject to the pension offset required by the Social Security Act and, if so, whether the benefits are being offset. The resulting information will then be furnished to the Social Security Administration to make the appropriate offsets. This matching program will permit more timely action to detect and prevent overpayments of Social Security benefits.

c. *Records to be Matched:* Records from the SSA Master Beneficiary Record, 47 FR 45626 (October 13, 1982) will be matched against selected state and local government personnel records and the Civil Service Retirement and Insurance Records system, 47 FR 16474 (April 16, 1982).

d. *Period of the match:* The initial matches will begin in September 1984 and will be completed within one year. The matches will then be repeated with different selected state and local government personnel records over the next several years.

e. *Safeguards:* Records used in this match will be maintained under strict security. Access to the computer files and printed information is restricted to only those persons associated with the matching program on a "need-to-know" basis. The records will be kept in locked file cabinets and under the control of the Office of the Inspector General. We will return all of the computer source tapes to the respective sources within 60 days of the match. We will also degauss all computer work tapes at completion of the matching program. We protect all computer tapes by the use of passwords to prohibit unauthorized access. All computer files are safeguarded in accordance with the provisons of the National Bureau of Standards Federal Information Processing Standards 41 and HHS ADP Systems Manual, Part 6, "ADP Systems Security".

f. *Retention and Disposition of Records:* Only records on individuals identified as receiving both government pensions and Social Security benefits will be maintained. All records maintained will be destroyed within 6 months of each match except for those records which are necessary to the completion of pending law enforcement or administrative activities. The data will be verified to insure accuracy prior to any dissemination of records on individuals identified as potentially subject to the pension offset provision.

[FR Doc. 84-23920 Filed 9-10-84; 8:45 am]

BILLING CODE 4150-04-M

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## Office of Human Development Services

### President's Committee on Mental Retardation; Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and date:

September 17, 1984 from 3:30 p.m. to 6:00 p.m.

September 18, 1984 from 9:00 a.m. to 4:30 p.m.,

September 19, 9:00 a.m. to 5:00 p.m.,

September 20, 9:00 a.m. to 3:00 p.m.

Place: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, D.C.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

### Matters To Be Considered

Reports by the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. The PCMR plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

### Contact Person for More Information

Linda L. Tarr, Ph.D., 330 Independence Avenue, Room 4061—North, Washington, D.C. 20201, (202) 245-7635.

Dated: September 5, 1984.

**Linda L. Tarr,**

*Executive Director, PCMR.*

[FR Doc. 84-23919 Filed 9-10-84; 8:45 am]

BILLING CODE 4130-01-M

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## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[Serial Nos. 1-1542, 1-2835]**

### Idaho; Termination of Classification for Multiple-Use Management

*Correction*

In a correction to FR Doc. 84-12630 appearing on page 32685 in the issue of Wednesday, August 15, 1984, make the following correction:

In column two, last line, "Sec. 91" should read "Sec. 19".

BILLING CODE 1505-01-M

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### Availability, Public Review Period; Recreation Area Management Plan; Pacific Crest National Scenic Trail; Owen Peak; Dove Springs, Cache Peak Segments

**ACTION:** Notice of Public Review Period and Availability of the Recreation Area Management Plan for the Pacific Crest National Scenic Trail—Owens Peak, Dove Springs, and Cache Peak Segments.

**SUMMARY:** A Recreation Area Management Plan for the Pacific Crest National Scenic Trail—Owens Peak, Dove Springs, and Cache Peak Segments, has been prepared and is available for public review for a 21-day period starting upon publication of this notice.

**SUPPLEMENTARY INFORMATION:** The Recreation Area Management Plan (RAMP) has been written to fulfill the requirements of the Pacific Crest National Scenic Trail (PCNST) Comprehensive Plan and Environmental Assessment mandated by Pub. L. 95-625, which required a second level of planning to be responsive to the specific issues, concerns, opportunities, and problems unique to the Owens Peak, Dove Springs, and Cache Peak Segments. These BLM-administered trail segments, located in Kern and Tulare counties in California, represent approximately 100 miles of the 2,560-mile PCNST that extends from Canada to Mexico. Fifteen management actions are addressed for each trail segment, including trailheads/points of access, trail camp development and spacing, water source development, trail camp sanitation, sanitation systems, user registration/permits/monitoring, spur/loop/feeder trails, signing and marking, litter disposal, interpretation and information, open fires, livestock feed,

off-road vehicles, carrying capacity, and maintenance.

**DATES AND ADDRESSES:** Copies of the RAMP are available for public inspection and comment at the following BLM offices:

Caliente Resource Area Office, 520 Butte Street, Bakersfield, California 93305
Bakersfield District Office, 800 Truxtun Avenue, Room 311, Bakersfield, California 93301
Ridgecrest Resource Area Office, 112 East Dolphin Road, Ridgecrest, California 93555.

Comments on the RAMP must be received at the address below within 21 days following publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Glenn A. Carpenter, Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861–4236.

Dated: September 4, 1984.

**Glenn A. Carpenter,**

*Area Manager.*

[FR Doc. 84–23980 Filed 9–10–84; 8:45 am]

**BILLING CODE 4310–40–M**

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**[NM56609 (OK), NM–56612 (OK), and NM–56613 (OK)]**

## Public Land Sale in Coal, Latimer, and Pittsburg Counties, OK

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Partial Sale Cancellation and Corrections.

**SUMMARY:** Tracts LT–2 and LT–3 have been eliminated from the sale for September 28, 1984, due to livestock grazing permit considerations. The identified lands will be reoffered for sale at a later date and are described as follows:

| Tract | Legal description | Acres |
|---|---|---|
| LT–2 and 3 | T. 6 N., R. 21 E., I.M., Sec. 31: Lot 3, NE¼SW¼. | 77.82 |

Corrections to the terms and conditions of the sale are as follows:

1. The sale is for surface estate only. All minerals for Tracts PT–5 & 6 will be reserved to the United States.

2. The sale of Tracts PT–5 & 6 will be subject to a floodplain reservation.

Acreage Correction:

| Tract | Legal description | Acres |
|---|---|---|
| CO–4 and 5 | T. 1 S., R. 10 E., I.M., Sec. 14: Lehigh Townsite Block 131, Lots 1 and 4. | .51 |

**FOR FURTHER INFORMATION CONTRACT:** Hans Sallani or Barron Bail, telephone (405) 231–5491.

**Jim Sims,**

*District Manager.*

[FR Doc. 84–23976 Filed 9–10–84; 8:45 am]

**BILLING CODE 4310–FB–M**

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## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 31, 1984. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 26, 1984.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**INDIANA**

**Allen County**

Craigville, *Craigville Depot*, Ryan and Edgerton Rds.

**Delaware County**

Muncie, *Jones, Margaret and George Riley, House*, 315 E. Charles St.
Muncie, *Masonic Temple*, 520 E. Main St.

**Fulton County**

Rochester, *Brackett, Lyman M., House*, 328 W. Ninth St.

**Gibson County**

Princeton, *Gibson County Courthouse*, Town Square

**Lake County**

Hammond, *State Bank of Hammond Building*, 5444–5446 Calumet Ave.

**Marion County**

Indianapolis, *Northside Historic District (Boundary Increase)*, Pennsylvania and 16th Sts.
Indianapolis, *Rink's Womens Apparel Store*, 29 N. Illinois St.
Indianapolis, *Vera and The Olga*, 1440 and 1446 N. Illinois St.

**Monroe County**

Bloomington, *Nichols, J. L., House and Studio*, 820 N. College Ave.

**Pulaski County**

Winamac, *Thompson, Dr. George W., House*, 407 N. Market St.

**Spencer County**

Santa Claus vicinity, *Deutsch Evangelische St. Paul's Kirche*, S of Santa Claus on Sante Fe Rd.

**Tippecanoe County**

Lafayette, *Scott Street Pavilion*, Columbian Park

**Wells County**

Bluffton, *Villa North Historic District*, 706–760 and 707–731 N. Main St.

**IOWA**

**Clay County**

Spencer, *Adams-Higgins House*, 1215 N. Grand Ave.

**Marion County**

Knoxville, *Hays, E.R., House*, 301 N. 2nd St.

**Page County**

Shenandoah, *Women's Christian Temperance Union Public Fountain*, Clarinda and Sheridian Sts.

**Pottawattamine County**

Council Bluffs, *Cavin, Thomas E., House*, 150 Park Ave.
Council Bluffs, *Hughes, Martin, House*, 903 3rd St.

**Woodbury County**

Sioux City, *St. Thomas Episcopal Church*, 1200 Douglas St.

**LOUISIANA**

**Caddo Parish**

Shreveport, *Holy Trinity Catholic Church*, 315 Marshall St.

**East Baton Rouge Parish**

Baton Rouge, *Baton Rouge Junior High School*, 1100 Laurel St.

**Orleans Parish**

New Orleans, *Newberger House*, 1640 Palmer Ave.

**MISSISSIPPI**

**Attala County**

Kosciusko, *Jackson-Niles House*, 121 N. Wells St.

**NEW JERSEY**

**Middlesex County**

Kingstown, *Withington Estate*, Spruce Lane

**NEW YORK**

**Bronx County**

New York, *Public School 17*, 190 Fordham St.

**Monroe County**

Rochester, *Andrews Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Andrews St. at Genesse River
Rochester, *Bridge Square Historic District (Inner Loop MRA)*, Roughly bounded by Inner Loop, Centre Park, Washington and W. Main Sts.
Rochester, *Court Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Court St. at Genesee River
Rochester, *Cox Building (Department Store TR) (Inner Loop MRA)*, 36—48 St. Paul St.
Rochester, *Duffy-Powers Building (Department Store TR) (Inner Loop MRA)*, 50 W. Main St.

Rochester, *Edwards Building (Department Store TR) (Inner Loop MRA)*, 26—34 St. Paul St.
Rochester, *Granite Building (Department Store TR) (Inner Loop MRA)*, 124 E. Main St.
Rochester, *Grove Place Historic District (Inner Loop MRA)*, Gibbs, Selden, Grove, and Windsor Sts.
Rochester, *Main Street Bridge (Stone Arch Bridge TR) (Inner Loop MRA)*, Main St. at Genesee River
Rochester, *National Company Building (Department Store TR) (Inner Loop MRA)*, 159 E. Main St.
Rochester, *St. Paul-North Water Streets Historic District (Inner Loop MRA)*, St. Paul, N. Water, and Andrews Sts.
Rochester, *State Street Historic District (Inner Loop MRA)*, 109—173 State St.

**New York County**

New York, *Sofia Warehouse*, 43 W. 61st St.

**Rockland County**

West Haverstraw vicinity, *Commander*, Haverstraw Marina

**Schenectady County**

Delanson, *Jenkins House (Duanesburg MRA)*, 57 Main St.
Duanesburg, *Abrahams Farmhouse (Duanesburg MRA)*, Hardin Rd.
Duanesburg, *Avery Farmhouse (Boss Jones TR) (Duanesburg MRA)*, NY 30
Duanesburg, *Becker Farmhouse (Duanesburg MRA)*, Creek Rd.
Duanesburg, *Braman, Joseph, House (Duanesburg MRA)*, Braman's Corners Rd.
Duanesburg, *Chadwick Farmhouse (Duanesburg MRA)*, Schoharie Tpk.
Duanesburg, *Chapman Farmhouse (Duanesburg MRA)*, Miller's Corners Rd.
Duanesburg, *Christ Episcopal Church (Duane Family TR) (Duanesburg MRA)*, NY 20
Duanesburg, *Delanson Historic District (Duanesburg MRA)*, Main St.
Duanesburg, *Duane Mansion (Duane Family TR) (Duanesburg MRA)*, NY 20
Duanesburg, *Duanesburg-Florida Baptist Church (Duanesburg MRA)*, NY 30
Duanesburg, *Eatons Corners Historic District (Duanesburg MRA)*, Eatons Corners Rd.
Duanesburg, *Ferguson, Farm Complex (Duanesburg MRA)*, NY 20
Duanesburg, *Gaige Homestead (Duanesburg MRA)*, Weaver Rd.
Duanesburg, *Gilbert Farmhouse (Duanesburg MRA)*, Thousand Acre Rd.
Duanesburg, *Green, Joseph, Farmhouse (Duanesburg MRA)*, NY 159
Duanesburg, *Halladay Farmhouse (Duanesburg MRA)*, U.S. 20
Duanesburg, *Hawes Homestead (Duanesburg MRA)*, Herrick Rd.
Duanesburg, *Howard Homestead (Duanesburg MRA)*, McGuire School Rd.
Duanesburg, *Jenkins Octagon House (Boss Jones TR) (Duanesburg MRA)*, NY 395
Duanesburg, *Jones, A.D., (Boss), House (Boss Jones TR) (Duanesburg MRA)*, Mcguire School Rd.
Duanesburg, *Ladd Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Dare Rd.
Duanesburg, *Lasher George, House (Duanesburg MRA)*, Levey Rd.
Duanesburg, *Liddle, Alexander, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Gamsey Rd.
Duanesburg, *Liddle, Robert, Farmhouse (Boss Jones TR) (Duanesburg MRA)*, Little Dale Farm Rd.
Duanesburg, *Liddle, Thomas, Farm Complex (Duanesburg MRA)*, Eaton Corners Rd.
Duanesburg, *Macomber Stone House (Duanesburg MRA)*, Barton Hill Rd.
Duanesburg, *Mariaville Historic District (Duanesburg MRA)*, NY 159
Duanesburg, *North Mansion and Tenant House (Duane Family TR) (Duanesburg MRA)*, North Mansion Rd.
Duanesburg, *Quaker Street Historic District (Duanesburg MRA)*, Schoharie Tpk., Gallupville and Darby Hill Rds.
Duanesburg, *Reformed Presbyterian Church Parsonage (Duanesburg MRA)*, Duanesburg Churches Rd.
Duanesburg, *Sheldon Farmhouse (Duanesburg MRA)*, NY 7
Duanesburg, *Shute Octagon House (Boss Jones TR) (Duanesburg MRA)*, McGuire School Rd.
Duanesburg, *Wing, Joseph, Farm Complex (Duanesburg MRA)*, NY 30
Duanesburg, *Wing, William R., Farm Complex (Duanesburg MRA)*, U.S. 20

**Westchester County**

Mount Kisco vicinity, *Merestead (Sloane Estate)*, Byram Lake Rd.

**OHIO**

Lebanon, *Coffeen, Goldsmith, House (Lebanon MRA)*, *419 Cincinnati Ave.*
Lebanon, *Corwin House (Lebanon MRA)*, 1255 OH 48
Lebanon, *Corwin-Bolin House (Lebanon MRA)*, 1443 OH 48
Lebanon, *East End Historic District (Lebanon MRA)*, Roughly bounded by South, Mound, Pleasant, and Cherry Sts.
Lebanon, *Ferney, John, House (Lebanon MRA)*, 475 Glosser Rd.
Lebanon, *Floraville Historic District (Lebanon MRA)*, Roughly bounded by Cincinnati and Orchard Aves., East and Keever Sts.
Lebanon, *Kaufman, Sam, House (Lebanon MRA)*, 448 S. Broadway
Lebanon, *Lebanon Academy (Lebanon MRA)*, 190 New St.
Lebanon, *Lebanon Cemetery Entrance Arch (Lebanon MRA)*, Hunter St.
Lebanon, *Lebanon Cemetery Superintendent's House (Lebanon MRA)*, 416 W. Silver St.
Lebanon, *Lebanon Commercial District (Lebanon MRA)*, Roughly Broadway, Mechanic, Silver, Mulberry, and Main Sts.
Lebanon, *Maplewood Sanitorium (Lebanon MRA)*, Maple and Deerfield Sts.
Lebanon, *Mohrman-Jack-Evans House (Lebanon MRA)*, 342 Columbus Ave.
Lebanon, *North Broadway Historic District (Lebanon MRA)*, Roughly Broadway, Warren, Pleasant, New and Mechanic Sts.
Lebanon, *Smith-Davis House (Lebanon MRA)*, 206 W. Silver St.
Lebanon, *West Baptist Church (Lebanon MRA)*, 500 W. Mulberry St.

**TENNESSEE**

**Coffee County**

Noah vicinity, *Farrar Distillery*, Noah Fork Rd.

**Giles County**

Pulaski vicinity, *Milky Way Farm*, U.S. 31

**Lawrence County**

Lawrenceburg, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Berger St.
Loretto, *Sacred Heart of Jesus Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Church St.
Rascal Town vicinity, *St. Mary's Cemetery (German Catholic Churches and Cemeteries of Lawrence County TR)*, Rascal Town Rd.
St. Joseph, *St. Joseph Church (German Catholic Churches and Cemeteries of Lawrence County TR)*, Spring St.

**Williamson County**

College Grove vicinity, *Parks Place*, Cox Rd.

**TEXAS**

**Floyd County**

*Floyd County Stone Corral (New Mexican Pastor Sites in Texas Panhandle TR)*,

**VERMONT**

**Orange County**

Thetford vicinity, *Peabody Library*, VT 113

**Orleans County**

Westmore, *Fox Hall*, VT 56

**WISCONSIN**

**Dane County**

Black Earth, *Heiney's Meat Market*, 1221 Mills St.

**Fond du Lac County**

Ripon, *Horner, John Scott, House*, 336 Scott St.

**Milwaukee County**

Milwaukee, *Steinmeyer, William, Houses (Brewers' Hill MRA)*, 1716—1722 N. 5th St.

[FR Doc. 84-23990 Filed 9-10-84; 8:45 am]
BILLING CODE 4310-70-M

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## Santa Monica Mountains National Recreation Area Advisory Commission; Meeting

Notice of hereby given that the Santa Monica Mountains National Recreation Area Advisory Commission will hold a public meeting on Tuesday, September 25, 1984 at 7:30 p.m. in the Visitor Center at Griffith Park, 4730 Crystal Springs Drive, Los Angeles.

The topics for discussion will include:

Superintendent's Status Report of the Santa Monica Mountains National Recreation Area.

Review of the Draft Cultural Resource Management Plan.

Review of the Draft Water Resources Management Plan.

Volunteerism During the Summer Olympics.

Status report on Resource Management Activities.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Superintendent, Santa Monica Mountains National Recreation Area, 22900 Ventura Boulevard, Suite 140, Woodland Hills, California 91364.

The minutes of the meeting will be available by October 31, 1984.

Dated: August 22, 1984.

**Daniel R. Kuehn,**

*Superintendent.*

[FR Doc. 84-23991 Filed 9-10-84; 8:45 am]

BILLING CODE 4310-70-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Forms Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

#### List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, WASHINGTON, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### New Collection

Bureau of Labor Statistics
CE Diary Research Questionnaires and Cover Letter, CE-802.2, CE-801, CE-801.1, CE-801.2, CE-803(L), CE-880
Daily
Individuals or households
6670 responses; 16897 hours; 6 forms.
The forms will be used to gather information on the reporting of expenditures by respondents in the CE Diary Survey. These data will be used to evaluate the quality of the information collected on consumer expenditures which is used in the Consumer Price Index.

Employment Standards Administration
Housing Occupancy Certificate
Annually
Individual or households; Farms; Businesses or other for-profit; Small businesses or organizations
400 responses; 3 hours; 1 form.
Section 203(b)(1) of the Migrant and Seasonal Agricultural Worker Protection Act requires any person owning or controlling any facility or real property to be occupied by any migrant agricultural worker to obtain a certificate of accupancy from a State or local health authority or other appropriate agency and keep it for three years.

#### Revision

Bureau of Labor Statistics
CPI Housing Survey—Housing Schedule and Segment Listing Form
1200-0034; BLS 2921C; 2921E 2922, 2922A
Semiannually; annually; other
Individuals or households; businesses or other for profit; small businesses or organizations
77,970 total responses; 18,970 hours; 4 forms

The data collected on the CPI Housing Survey provide the measures of monthly price change for renter and owner occupied housing costs, which compromise 20 percent of the current CPI weight. The respondents are the occupants and owners of 37,000 housing units surveyed once or twice a year. As part of current efforts to revise the CPI, field testing of alternative housing survey forms is required to resolve issues of wording, applicability across regions and types of housing, form layout, and collection procedures.

ES-202 State Operations Review
1220-0070; BLS-3030
Biannual
State or local governments
53—responses; 216 hours; 1 form

The ES-202 State Operations Review is the principal source of management information on quality and State conformance to BLS specified procedures in the collection and tabulation of the Quarterly Report on Employment, Wages and Contributions. The form is used by BLS Regional Office staff in their annual interview with employment security officials to assess the status of the program, note improvements that have been made, and discuss what other improvements, if any, should be made.

Employment Standards Administration
Preparation of Complaint Form by Individual Complainants
1251-0131; CC-4
Other
Individual or Households
3,120 responses; 3,619 hours.

These complaint forms are prepared by individual citizens who allege discrimination by Government contractors. The form is received by OFCCP, reviewed for coverage, and where appropriate, assigned for investigation. Form CC-4 is used for complaints under EO 11246 and complaints under Section 503 of the Rehabilitation Act and Section 2012 of the Vietnam Era Veterans' Readjustment Assistance Act.

#### Extension

Mine Safety and Health Administration
Gamma Radiation Exposure Records
1219-0039
Quarterly
Businesses or other for profit; small businesses or organizations

35 respondents; 560 hours.

Requires that gamma radiation surveys be conducted in underground metal and nonmetal mines where radioactive ores are mined and that records be kept of accumulative individual gamma radiation exposure.

**Extension**

Mine Safety and Health Administration
Safety Defects of Self-propelled Equipment
1219-0089
Other—each shift equipment is used
Businesses or other for profit; small businesses or organizations
13,272 respondents; 2,433,156 hours.

Requires operator before placing self-propelled equipment into operation to make a visual and operational check of various primary operating systems affecting safety, i.e., brakes, lights, tires, steering, and related items. Any safety defects found are reported to the responsible supervisor who is required to make a record of the reported defects and schedule repairs of same.

Signed at Washington, D.C. this 6th day of September, 1984.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 84-23992 Filed 9-10-84; 8:45 am]

BILLING CODE 4510-24-M

## Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; American Thread Co., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 21, 1984.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Septemnber 21, 1984.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 31st day of August 1984.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner (Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| American Thread Co., Tallapoosa Plant (company) | Tallapoosa, GA | 8/27/84 | 8/21/84 | TA-W-15,447 | Thread, sewing—synthetic & cotton. |
| Lesnow Manufacturing Co., Inc. (wkrs) | Easthampton, MA | 8/28/84 | 8/22/84 | TA-W-15,448 | Blazers—ladies'—tailored. |
| Majestic Mining, Inc. (wkrs) | Widen, WV | 8/22/84 | 8/15/84 | TA-W-15,449 | Coal, mining. |
| Merrill & Ring, Inc. (IAW) | Port Angeles, WA | 8/28/84 | 8/17/84 | TA-W-15,450 | Lumber. |
| Murray Ohio Manufacturing Co. (wkrs) | Lawrenceburg, TN | 8/27/84 | 8/21/84 | TA-W-15,451 | Bicycles—light weight. |
| U.S. Steel Corp., Traffic International (workers) | New York, NY | 8/28/84 | 8/21/84 | TA-W-15,452 | Planning ocean freight shipment—export for U.S. Steel Corp. |

[FR Doc. 84-23993 Filed 9-10-84; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted by March 7, 1984.

**ADDRESSES:** Send comments to Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, D.C. 20503; (202-395-6880). In addition, copies of such comments may be sent to Ms. Marianna Dunn, National Endownment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506 (202-682-5464).

**FOR FURTHER INFORMATION CONTACT:** Ms. Marianna Dunn, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506; (202-682-5464) from whom copies of the document are available.

**SUPPLEMENTARY INFORMATION:** This entry is a new form. The entry issued by the Endowment contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

**New Form**

*Title:* Economic Survey of Artists Organizations.

*Form Number:* N/A.

*Frequency of Collection:* One-time.

*Respondents:* Non-profit institutions.

*Use:* Collection of data provides a basis for agency planning, responses at budget hearings, and improvements of understanding of organizations on the state of their field.

*Estimated Number of Respondents:* 322.

*Estimated Hours for Respondents to Provide Information:* 161.

**Peter J. Basso,**

*Director of Administration, National Endowment for the Arts.*

[FR Doc. 84-23939 Filed 9-10-84; 8:45 am]

BILLING CODE 7537-01-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Civil and Environmental Engineering; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Civil and Environmental Engineering.

Place: Rm. 1141, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Date: September 27, 1984—9:30 a.m. to 5:00 p.m. September 28, 1984—9:00 a.m. to 4:00 p.m.

Type of meeting: Open.

Contact person: Dr. William S. Butcher, Director, Division of Civil and Environmental Engineering, National Science Foundation, Rm. 1132, 1800 G Street, NW., Washington, D.C. 20550, Telephone: 202/357-9545.

Purpose of committee: To provide advice and recommendations concerning Civil and Environmental Engineering.

Summary minutes: May be obtained from the contact person at the above stated address.

**Agenda**

*Thursday, September 27*

9:30 a.m.—General Report by Division Director
10:30 a.m.—Briefing of Committee and Discussion of Programs of the Division
(a) Geotechnical Engineering
(b) Structural Mechanics
(c) Hydraulics, Hydrology, and Water Resources Engineering
(d) Environmental and Water Quality Engineering
(e) Construction Engineering and Building Research
(f) Earthquake Hazard Mitigation
12:30 Noon—Recess
2:00 p.m.—Research Needs in Civil and Environmental Engineering in the United States
5:00 p.m.—Adjourn

*Friday, September 28*

9:00 a.m.—Continuation of Discussion of Research Needs in Civil and Environmental Engineering in the United States and Other Countries
12:00 Noon—Recess
2:00 p.m.—Continuation of Morning Discussion
4:00 p.m.—Adjourn

**M. Rebecca Winkler,**

*Committee Management Coordinator.*

September 6, 1984.

[FR Doc. 84-23912 Filed 9-10-84; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50-348 and 50-364]**

### Alabama Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-2 and NPF-8, issued to Alabama Power Company (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units Nos. 1 and 2 (the facilities) located in Houston County, Alabama.

The amendments would delete the words "during shutdown" in Technical Specification 4.7.1.2.2.b.1 to allow scheduling of the surveillance without requiring a plant shutdown on October 10, 1984. The surveillance involves verifying that each automatic valve in the auxiliary feed flow path actuates to its correct position on an automatic pump start signal.

The revisions to the Technical Specifications would be in accordance with the licensee's application for amendments dated August 17, 1984.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments request involve no signficant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee states that the change is an administrative change similar to Commission example "(i) A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." We tend to agree. Our preliminary review indicates that the surveillance test can be accomplished safety without a reactor shutdown and would not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 11, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene.

Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments request involve no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union operator at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Branch Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, 1800 M Street, NW., Washington, D.C. 20036, attorney for the license.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for the amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Dated at Bethesda, Maryland, this 4th day of September 1984.

For the Nuclear Regulatory Commission.

**Steven A. Varga,**

*Chief, Operating Reactors Branch No. 1, Division of Licensing.*

[FR Doc. 84-24006 Filed 9-10-84; 8:45 am]
BILLING CODE 7590-01-M

## Abnormal Occurrence; Inoperable Containment Spray System

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. In addition, example II.A.3 under "For All Licensees" notes that loss of plant capability to perform essential safety functions such that a potential release of radioactivity in excess of 10 CFR Part 100 guidelines could result from a postulated transient or accident (e.g., loss of emergency core cooling system, loss of control rod system) can be considered an abnormal occurrence. The following description of the incident also contains information on the remedial actions planned and taken.

### Date and Place

On March 17, 1984, Southern California Edison Company (the licensee) discovered that both containment spray pump manual discharge isolation valves were locked shut, thus rendering both independent containment spray systems inoperable at the San Onofre Nuclear Generating Station, Unit 3. It was found that the condition had existed for about 13 days, during which the plant had operated at power levels up to full power. San Onofre Unit 3, which utilizes a Combustion Engineering-designed pressurized water reactor, is located in San Diego County, California.

### Nature and Probable Consequences

The containment heat removal system (CHRS) at San Onofre Unit 3 is an engineered safety features system designed to remove heat from the containment atmosphere in the event of a loss of coolant accident (LOCA) or main steam line break (MSLB) inside containment. Removal of heat reduces the containment pressure and temperature, which reduces the leakage of airborne activity from the containment. The CHRS includes the containment spray system (CSS) and the containment emergency fan cooler system. The CSS also contains a chemical additive (sodium hydroxide)

which reduces the concentration of radioactive iodine in the containment atmosphere following a postulated accident.

The CSS and the containment emergency fan cooler system constitute two 100% capacity systems in that each is designed to independently remove heat from the containment atmosphere, following a postulated accident inside containment, to maintain the containment atmosphere pressure below the containment design pressure of 60 psig. Each of the two trains of the CSS constitutes a 50% capacity system for required heat removal rate and a 100% capacity system for iodine reduction. Each of the two trains (each containing two fan coolers) of the containment emergency fan cooler system constitutes a 50% capacity system for required heat removal rate.

On March 17, 1984, with the unit in Mode 1 at approximately 100% power, manual isolation valves MU012 and MU014 were observed by a plant operator to be in the closed position. These valves are on the discharge side of the containment spray pumps and are located outside of containment. With both valves closed, both trains of the CSS were inoperable for automatic actuation. Investigation showed the following details associated with the event.

On February 27, 1984, the unit entered Mode 4 from Mode 5. Procedure SO23–3–2.9, "Containment Spray/Iodine Removal System Operation," Checklist 5.1 was performed to align the CSS in preparation for Mode 3 operation. MUO12 and MUO14 were verified to be in the locked open position. On February 28, 1984, preparations were being made to return to Mode 5 in order to repair a high pressure safety injection (HPSI) valve. Valves MUO12 and MUO14 were closed in accordance with procedures in order to return to shutdown cooling operation. On March 2, 1984 following repair of the HPSI valve, preparations were being made to return to Mode 3. The Control Room Supervisor developed a partial valve alignment checklist from Checklist 5.1 of Procedure SO23–3.2.9. to realign the CSS. Since the outage did not involve work on the CSS and the entire Checklist 5.1 had been performed four days earlier on February 28, 1984, the plant personnel agreed that a complete alignment checklist was unnecessary. CSS valves MUO12 and MUO14 were erroneously omitted from the partial checklist.

There was second opportunity on March 2, 1984 in which the licensee could have detected the valving error, but failed to do so. On March 2, 1984, a containment spray pump was operated to flush the spray header and the operator failed to verify flow from the flow-rate-meter in the control room.

At 9:55 a.m. on March 4, 1984, the unit entered Mode 3 with both trains of the CSS inoperable in violation of the technical specifications. The plant operated in Modes 3, 2, and 1 in this manner until the condition was corrected at 2:00 p.m. on March 17, 1984, a period of about 13 days.

During this period, another violation occurred which further degraded the CHRS. From about 4:20 a.m. on March 15, 1984, to about 5:35 p.m. on March 16, 1984, one of the two diesel generators was removed from service (placed in maintenance lockout); thus, the emergency power source (had there been a total loss of offsite power) for the associated train of the containment emergency fan cooler system was inoperable. This violation occurred since the licensee was unaware that the CSS was inoperable at the time.

Although there was no actual demand for the containment cooling systems to perform their accident mitigating functions during the 13 day period, substantial degradation of the capability of the systems to mitigate the consequences of a postulated loss of reactor coolant accident did exist. During the time in question, automatic actuation of the CSS would not have been possible. However, there are indications in the control room which could inform the reactor operators that spray injection was not taking place. Upon recognizing the situation, manual actuation of the CSS could have been made.

Although the reactor operators could be expected to take timely actions, the NRC staff has performed bounding calculations to predict worse case conditions in order to determine whether the containment design pressure or the post-accident off-site dose limitations would be exceeded after a design basis accident. For the staff's calculations, it was assumed that one diesel generator would be out of service whch would preclude operation of two out of four containment fan cooler units. This assumption was made because during part of the time is question, one of the diesel generatiors was taken out of service for maintenance a discussed above. The NRC findings were:

1. The containment design pressure (60 psig) would have been exceeded if a design basis LOCA had occured during the period of degraded containment cooling. The licensee calculated a peak pressure of 65 psig for the worst case LOCA, whereas the NRC analysis results in 62 psig. As noted by the licensee, however, the containment has been successfully tested to a pressure of 69 psig during preoperational testing. Therefore, containment integrity would not have been breached by the worst case LOCA, if it had occurred during the time when the containment sprays and one diesel generator train were disabled.

2. Given that containment intergrity would have been maintained, the licensee calculated a worst case dose at the exclusion area boundary of 240 rems to the thyroid, assuming a one hour delay in containment spray operation. The NRC analalysis of this case resulted in 420 rems (thyroid), which is above the 10 CFR part 100 limit of 300 rems. The difference in the two dose values appears to be the result of the use by the NRC of a meteorological analysis and model consistent with those used in the NRC's Safety Evaluation Report, NUREG–0712, while the licensee used the meteorological evaluation from its final safety analysis report (FSAR).

**Cause or Causes**

Thue apparent underlying causes of the event were: (1) Inadequate review and approval of changes made to a previously established valve aligment check list and (2) the existence of an administrative procedure (SO23–0–35), promulgated by management, which allowed such changes to be made without adequate review and approvals.

At San Onofre, administrative procedures provide authorization for an SRO Supervisor to designate only a portion of a checklist for use when circumstances warrant. This authorization was included to avoid errors resulting from development of special purpose checklists when conducting retests following correction of component failures within lengthy surveillance procedures, for example. Other objectives of this provision included ALARA (as low as reasonably achievable) exposure considerations, where complete system alignment checklists include vents and drains in high radiation areas which were not affected by a particular evolution, and secondary plant equipment alignments which usually involve only a portion of any one system checklist. This authorization was not intended for use in establishing a partial checklist of a main process valves when performing a system evolution such as leaving shutdown cooling alignment and establishing CSS operability. However, this intent was not clear. In this case, the authorization was used to, in effect, revise the procedure intended to

establish CSS operability contrary to the intent.

The Control Room Supervisor (an SRO) did not recognize that the containment spray pump manual discharge isolation valves were closed when entering the shutdown cooling alignment. Therefore, in designating the subset of CSS valves to be repositioned and verified upon leaving the shutdown cooling alignment, valves MUO12 and MUO14 were omitted and remained closed until identified on March 17. No Piping and Instrumentation Diagram (P&ID) was provided to explicitly show the valve alignment for shutdown cooling. Also, no partial checklist was provided for the subset of CSS valves required to be repositioned when leaving shutdown cooling. Accordingly, there was no effective procedural means to ensure MUO12 and MUO14 would be opened, short of reperforming the entire CSS value aligment checklist. As described in the sequence of events above, since the entire checklist had been performed on February 28, 1984, the Control Room Supervisor and the Shift Superintendent considered that it did not need to be reperformed.

**Actions Taken To Prevent Recurrence**

*Licensee*

The licensee has revised written procedures to ensure the proper alignment of valves prior to entering a mode of operation for which the system is required to be operable. Steps have also been taken by the licensee to ensure more effective controls over the preparation of and changes to operating procedures. The licensee's training program is being revised to provide additional emphasis on operator recognition of proper system alignments during various plant evolutions.

*NRC*

An examination of the circumstances associated with the event was included in an inspection performed at the licensee during the period of March 17 through March 29, 1984. The report of the inspection was sent to the licensee on April 5, 1984. An enforcement conference was held between NRC Region V and licensee personnel on May 9, 1984.

On May 16, 1984, NRC Region V forwarded to the licensee a notice of violations and proposed imposition of civil penalties in the amount of $250,000. The forwarding letter expressed the NRC's serious concern that the event resulted in a significant degradation in the engineered safety features of the faculty, and that inadequate management controls contributed substantially as an underlying cause. The letter further noted that several other enforcement actions since January 1983 pertaining to the licensee's San Onofre Units 2 and 3 facilities indicate that management problems have not been adequately corrected.

The NRC will monitor the corrective actions taken by the licensee.

During the past several years, there have been several events at various nuclear power plants involving degradation of containment spray systems. On May 25, 1984, the NRC issued Inspection and Enforcement Information Notice No. 84–39 ("Inadvertent Isolation of Containment Spray Systems") to all facilities holding an operating license or construction permit.This may help to reduce the frequency of these types of events by heightening the industry's awareness of the potential for such events and the circumstances associated with their occurence.

Dated in Washington, D.C., this 5th day of September 1984.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 84-24007 Filed 9-10-84; 8:45 am]

BILLING CODE 7590-01-M

## SMALL BUSINESS ADMINISTRATION

### Region IV Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Jacksonville, Florida, will hold a public meeting from 9:30 a.m. to 3:30 p.m., Tuesday, October 23, 1984, in the Board Room at Sun Bank, N.A., Central Park Office, 6900 South Orange Blossom Trail, Orlando, Florida 32859, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call Douglas E. McAllister, District Director, U.S. Small Business Administration, Box 35067, 400 West Bay Street, Jacksonville, Florida 32202; telephone (904) 791–3103.

Dated: September 5, 1984.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 84-23986 Filed 9-10-84; 8:45 am]

BILLING CODE 8025-01-M

### Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Dallas, will hold a public meeting at 9:00 a.m. on Friday, October 19, 1984 in the Sheraton Inn Waco, 401 IH 35, Waco, Texas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present. For further information, write or call James S. Reed, District Director, U.S. Small Business Administration, 1100 Commerce Street, Room 3C36, Dallas, Texas 75242—(214) 767–0600.

Dated: September 5, 1984.

**Jean M. Nowak,**

*Director, Office of Advisory Councils.*

[FR Doc. 84-23985 Filed 9-10-84; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF STATE

**[Public Notice 914]**

### Foreign Assistance Determination; Peru

By virtue of the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (the Act), and Executive Order 12163, as amended, I hereby determine that it is in the national interest to furnish assistance under the Act in Fiscal Year 1984 to Peru, notwithstanding that the Government of Peru is more than six months in default in payment to the United States of principal and interest on loans made under the Act.

This Determination with the justification therefor shall be reported to Congress. The Determination shall be published in the **Federal Register.**

Dated: December 8, 1984.

**Kenneth Dam,**

*Acting Secretary of State.*

[FR Doc. 84-23975 Filed 9-10-84; 8:45 am]

BILLING CODE 4710-08-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Organization and Functions; Spokane, WA; Establishment and Name Change

Notice is hereby given that the following Flight Standards reorganization will occur on or about September 30, 1984. This information will be reflected in the Federal Aviation Administration (FAA) organization statement next time it is reissued. Services to the general public will continue to be provided without interruption by all offices except that services previously performed by the Grand Junction Satellite General Aviation District Office will be

performed by the Denver and Salt Lake City Flight Standards District Offices.

Flight Standards District Office at 5620 East Rutter Avenue, Spokane, Washington 99206, will become a Flight Standards Field Office under the direction of the Seattle Flight Standards District Office at 7300 Perimeter Road South, Seattle, Washington 98108.

General Aviation District Office at 90606 Greenhill Road, Eugene, Oregon 97402, will become a flight Standards Field Office under the direction of the Portland Flight Standards District Office at 3355 NE Cornell Road, Hillsboro, Oregon 97123.

Flight Standards District Office in Room 216 Administration Building, Billings Logan International Airport, Billings, Montana 59101, will become a Flight Standards Field Office under the direction of the Helena Flight Standards District Office in Room 3, FAA Building, Helena Airport, Helena, Montana 89601.

General Aviation District Office at 3975 Rickenbacker, Boise, Idaho 83705, will become a Flight Standards Field Office under the direction of the Salt Lake City Flight Standards District Office at 116 North 2400 West, Salt Lake City, Utah 84116.

General Aviation District Office at Jefferson County Airport, Building #1, Broomfield, Colorado 80020, and the Broomfield General Aviation District Office Satellite at 2800 "H" Road, Grand Junction, Colorado 81501, will be consolidated with the Denver Air Carrier District Office and become the Denver Flight Standards District Office at 10455 E. 25th Avenue, Aurora, Colorado 80010.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Seattle, Washington, on August 27, 1984.

**Wayne J. Barlow,**

*Acting Director, Northwest Mountain Region*

[FR Doc. 84-23902 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

## Cessna Model 210 Airplanes; Availability of Special Certification Review

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of documentation.

**SUMMARY:** The Director of the FAA, Central Region, has conducted a review of the issues involved in the Cessna Model 210 Special Certification Review. He has also reviewed and discussed with has staff a document entitled "Cessna Model 210 Icing Special Certification Review, Final Report". Based on this review, the Director approves issuance of the Cessna 210 Special Certification Review. A copy of this document is on file in the FAA Rules Docket and is available for examination and copying at the Rules Docket, and also may be obtained from the Office of the Regional Counsel, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 28, 1984.

**Murray E. Smith,**

*Director.*

[FR Doc. 84-23894 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-13-M

## National Highway Traffic Safety Administration

**[Docket No. IP84—14; Notice 1]**

## K mart Corp.; Petition for Determination of Inconsequential Noncompliance

K mart Corp. of Troy, Michigan has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for noncompliances with two Federal motor vehicle safety standards. The standards are 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, and 49 CFR 571.120, Motor Vehicle Safety Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* The basis of the petition is that the noncompliances ar inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

K mart Corporation is the importer of certain heavy duty trailer kits manufactured by Long Chih Ind. Co. of Taiwan. As an importer for resale, K mart is a "manufacturer" as defined by 15 U.S.C. 1391(5), and accordingly, responsible for notification and remedy of noncompliances with the Federal motor vehicle safety standards in the products that it imports. K mart has discovered noncompliances with Motor Vehicle Safety Standards Nos. 119 and 120 in approximately 5,000 kits which have been sold to its customers.

*Standard No. 119.* The tires may not be marked with the maximum load rating and corresponding inflation pressure as required by paragraph S6.5(d).

*Standard No. 120.* The rims are not marked with any of the five items of information required by paragraph S5.2. These are a designation which indicates the source of the rim's published nominal dimensions, the rim size designation, the symbol DOT constituting a certification of compliance, a designation that identifies the manufacturer of the rim by name, trademark, or symbol, and the date of manufacture. In addition, the trailers have no label providing the three items of information required by paragraph S5.3: the tire size designation appropriate for the Gross Axle Weight Rating, the size designation and, if applicable, the type designation of rims appropriate for the tires, and the cold inflation pressure for the tires.

Petitioner argues that the noncompliances are inconsequential because the trailers otherwise comply with all applicable Federal motor vehicle safety standards, and that there is no indication that the trailer kits are inferior either in quality or any safety-related way.

Interested persons are invited to submit written data, views and arguments on the petition of K mart Corp. described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are A.Y. Casanova and Taylor Vinson, respectively.

Comment closing date: October 11, 1984.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 6, 1984.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 84-23994 Filed 9-10-84; 8:45 am]

BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Firearms; Granting of Relief

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF).

**ACTION:** Notice of Granting of Relief from Disabilities Incurred by Conviction.

**SUMMARY:** The persons named in this notice have been granted relief by the Director, Bureau of Alcohol, Tobacco and Firearms, from their disabilities imposed by Federal laws. As a result, these persons may lawfully acquire, transfer, receive, ship, and possess firearms if they are in compliance with applicable laws of the jurisdiction in which they live.

**FOR FURTHER INFORMATION CONTACT:** Special Agent in Charge Paul M. Durham, Firearms Enforcement Branch, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20026, (202–566–7258).

**SUPPLEMENTARY INFORMATION:** In accordance with 18 U.S.C. 925(c), the persons named in this notice have been granted relief from disabilities imposed by Federal laws with respect to the acquisition, transfer, receipt, shipment, or possession of firearms incurred by reason of their convictions of crimes punishable by imprisonment for a term exceeding one year.

It has been established to the Director's satisfaction that the circumstances regarding the convictions and each applicant's record and reputation are such that the applicants will not be likely to act in a manner dangerous to public safety, and that the granting of the relief will not be contrary to the public interest.

The following persons have been granted relief:

*ACREBACK, Gus Ray* Route 2, Box 294–A, Buffalo, Missouri, convicted on July 21, 1977, in the Circuit Court, Buffalo, Missouri.

*ADOMAVICH, Phillip* Route 6, Golf Course Drive, Fond du Lac, Wisconsin, convicted on October 14, 1974, in the Sheboygan County Court, Sheboygan, Wisconsin.

*ALTO, James Roger* 2233 West 200 North, Provo, Utah, convicted on March 31, 1978, in the United States District Court, Western District, Seattle, Washington.

*AMOS, Ray Bailey* Route 2, Box 270, Altha, Florida, convicted on April 4, 1961 in the United States District Court, Middle District, Albany, Georgia; and on June 1, 1965 in the United States District Court, Northern District, Marianna, Florida.

*BAKER, Dolph Rodman* Ocean Reef Club Staff Housing, Key Largo, Florida, convicted on March 26, 1970, in the Erie County Court, Buffalo, New York.

*BAXTER, David Bruce* 1018 Ruble Street, New Port, Tennessee, convicted on June 20, 1969 in the United States District Court, Greenville, Tennessee.

*BENSON, Thomas Lee* Route 1, Box 128, Earlysville, Virginia, convicted on October 13, 1966, in the Albemarle County Circuit Court, Charlottesville, Virginia.

*BENTZ, Larry Pierce* 1220 West 33rd Street South, Wichita, Kansas, convicted on October 13, 1976, in the Sedgwick County District Court, Kansas.

*BERNARD. Bobby C.* Post Office Box 24, Highway 64–70, Icard, North Carolina, convicted on March 17, 1976, in the Catawba County Superior Court, Newton, North Carolina.

*BOTTOM, Terry* Box 12, Ardmore, Alabama, convicted on April 11, 1980, in the United States District Court, Northern District, Huntsville, Alabama.

*BOURQUE, Carl James* Post Office Box 485, Highway 31, Saint Martinville, Louisiana, convicted on April 22, 1976, in the 16th Judicial District Court, New Iberia, Louisiana.

*BRITTAIN, Darrell Kent* Route 1, Helen, Georgia, convicted on May 26, 1978, in the United States Superior Court, White County, Georgia.

*CARRICARTE, Albert Louis* 2491 NW. 7th Street, Miami, Florida, convicted on November 6, 1978, in the Dade County Circuit Court, Dade County, Florida.

*CARTER, Susan De Lane Webb* 4510 Beloxi, Apartment 4, Millington, Tennessee, convicted on May 2, 1978, in the United States District Court, Memphis, Tennessee.

*CASTEEL, LaVern Keith* Route 1, Box 228, Sharpsburg, Maryland, convicted on January 23, 1984, in the United States District Court, Southern District, Indiana.

*CONNER, Richard Lee, Jr.* 3909 SE. 214th Avenue, Camas, Washington, convicted on August 13, 1974 in the United States Superior Court, Clark County, Washington.

*COURTNEY, Donald Ray* 115 Brooke Place, Avondale, Arizona, convicted on October 20, 1976, in the Maricopa County Superior Court, Phoenix, Arizona.

*DE JESUS-MANGUAL, Tomas* Edificiao Condado Del Mar, Apartment 218, Santurce, Puerto Rico, convicted on July 21, 1972, in the Superior Court, San Juan, Puerto Rico; and on May 30, 1973 in the Superior Court, San Juan, Puerto Rico.

*DE ROEUN, Pat Eugene* 655 Holly, Duncanville, Texas, convicted on January 5, 1981, in the Federal Court, Eastern District, Texas.

*DONNA, Lawrence Andrew* 229 North Atlantic Avenue, Unit 104, Cocoa Beach, Florida, convicted on March 1, 1979, in the United States District Court, Middle District, Orlanda, Florida.

*DOWNS, Phillip G.* 2705 Canna Ridge Circle NE., Atlanta, Georgia, convicted on August 7, 1979, in the United States District Court, Atlanta, Georgia.

*ECK, Orestes LaVern* 320 Wind Rows, Goddard, Kansas, convicted on September 4, 1981, in the United States District Court, Wichita, Kansas.

*ELIAS, Edward Salem* 6764 Grace Circle North, Jacksonville, Florida, convicted on March 22, 1971, in the Duval County Circuit Court, Jacksonville, Florida.

*ELLIOTT, Allen Francis* 2763 Robin Drive, Saginaw, Michigan, convicted on December 5, 1969, in the Monroe County Circuit Court, Monroe, Michigan.

*ESTES, Larry Wayne* Route 4, Box 129, Somerville, Alabama, convicted on August 31, 1970, in the Cullman County Circuit Court, Cullman, Alabama.

*FLECHER, Robert Joseph* 4129 Devonshire, Detroit, Michigan, convicted on November 17, 1966, in the Wayne County Circuit Court, Detroit, Michigan.

*FORD, John Walter* 7209 John Ralston, Trailer A, Houston, Texas, convicted on March 24, 1976, in the 92nd District Court of Hildalgo County, Texas.

*GARRETT, Byron Roland* 2915 Arunah Avenue, Baltimore, Maryland, convicted on May 13, 1972, in the Maryland District Court, Northwestern District, Maryland.

*GILBERT, Robert George* 5106 Kenilworth Avenue, Apartment 9, Hyattsville, Maryland, convicted on October 3, 1980, in the Lynchburg Circuit Court, Virginia.

*GILES, Tony Sylvester* 3961 Rainbow Drive, Virginia Beach, Virginia, convicted on February 13, 1974; and on November 8, 1978, in the General Court of Justice, 23rd Judicial District Yadkin County, North Carolina.

*GOLDMAN, Clinton* Route 1, Washington, Georgia, convicted on August 5, 1953, in Wilkes County Superior Court, Washington, Georgia; and on November 19, 1975 in the

United States District Court, Augusta, Georgia.

*HADDOCK, Danny J.* Flying "G" Ranch, Jordon Valley, Oregon, convicted on February 8, 1978, in the First District Court of the Judicial District, Idaho.

*HAMILTON, Larry Bruce* 420 South Adams, Hugoton, Kansas, convicted on October 13, 1965, in the Butler County District Court, Kansas.

*HANSON, Royce Eugene* Post Office Box 126, Ashville, Alabama, convicted on December 12, 1966, in the Jefferson County District Court, Birmingham, Alabama.

*HARRIS, David Edward* 6729 New Britton Road, Mechanicsville, Virginia, convicted on February 11, 1955, in the Hustings County Court, Richmond, Virginia; and on August 11, 1958, in the Circuit Court, Goochland County, Virginia.

*HARRIS, Russell Earl* 6525 Cool Spring Road, Mechanicsville, Virginia, convicted on December 3, 1952, in the Circuit Court, City of Richmond, Virginia.

*HENRY, John M.* 2011 Citrus Avenue, Jessup, Maryland, convicted on December 30, 1971, in the Howard County Circuit Court, Maryland.

*HERBES, Richard Leonard* Route 1, Box 10–E, Haines, Oregon, convicted on January 2, 1980, in the Baker County Circuit Court, Oregon.

*HIMES, Robert Wayne* Rural Delivery #4, Kittanning, Pennsylvania, convicted on August 26, 1981, in the Common Pleas Court, Alleghany, Pennsylvania.

*HOLT, William Lee* 2334 Virginia Avenue, Apartment 103, Landover, Maryland, convicted on May 8, 1975, in the Prince Georges County District Court, Maryland.

*HOY, Phillip* 7260 South Elm Road, Swartz Creek, Michigan, convicted on June 9, 1981, in the United States District Court, Eastern District, Flint, Michigan.

*HUTCHINSON, Susanne Marlene* 4467 146th Avenue SW., Bellevue, Washington, convicted on November 30, 1972, in the United States District Court, Judicial District of Minnesota.

*HUTCHINSON, Thomas W.* 4467 146th Avenue SW., Bellevue, Washington, convicted on November 30, 1972, in the United States District Court, Judicial District of Minnesota.

*JACKSON, Bryan Paul* 10370 Faulkner Ridge Drive, Columbia, Maryland, convicted on August 29, 1973, in the Anne Arundel County District Court.

*JOHNSON, Johnny Louis* Route 9, Box 346, Johnson City, Tennessee, convicted on October 26, 1971, in the United States District Court, Middle District, Nashville, Tennessee.

*JOHNSON, Michael Lee* 220–C Irby Avenue, Laurens, South Carolina, convicted on March 22, 1977, in the Greenwood County Court of General Sessions, Columbia, South Carolina.

*JONES, Barney William* 756 East 22nd Street, Brooklyn, New York, convicted on October 1, 1963, in the United States District Court, Southern District, New York.

*KEIM, Gregory Jon* Box 124, Lakota, North Dakota, convicted on April 2, 1980, in the Northeast Central District Court, Grand Forks, North Dakota.

*KOCH, Melvin Lynn* Route 1, Box 4231, Twin Falls, Idaho, convicted on March 16, 1981, in the District Court of the Fifth Judicial District of Twin Falls, Idaho.

*KOESTER, Thomas Herney* Rural Delivery #1, Box 401–5, Slippery Rock, Pennsylvania, convicted on April 23, 1982, in the Common Pleas Court, Butler County, Pennsylvania.

*KORNOFSKY, Joseph Paul* 379 De Graw Street, Brooklyn, New York, convicted on September 8, 1977, in the Kings County Supreme Court, New York, New York.

*KRAMER, Norbert August* 1664 Randolph Avenue, Saint Paul, Minnesota, convicted on July 8, 1971, in the District Court, Ramsey County, Minnesota.

*KROPP, Bradford Lee Alexander* 20706–53rd Avenue West, Lynwood, Washington, convicted on September 13, 1973, in the Superior Court, King County, Washington.

*KUYKENDALL, James Donald* 810 West Second Street, Kuna, Idaho, convicted on November 4, 1976, in the Fourth Judicial District Court, Idaho.

*LALE, Horace Edwin* 7533 Melba Avenue, Canoga Park, California, convicted on July 2, 1951, in the Circuit Court, Kansas City, Missouri.

*LANCASTER, Roger Vance* 4533 Kirkman Road, Apartment 5, Orlando, Florida, convicted on March 1, 1966, in the Seminole County, Circuit Court, Sanford, Florida.

*LAU, Eddie K.* 10423 60th Avenue South, Seattle, Washington, convicted on December 12, 1969, in the Superior Court, King County, Seattle, Washington.

*LEEP, Edward E.* 1135 Lakeview Drive, Schereville, Indiana, on the November 18, 1980, in the United States District Court, Hammond, Indiana.

*LEMERICH, Edwin J., Jr.* Rural Delivery 1, Box 156–A, Forest City, Pennsylvania, convicted on March 1, 1976, in the New Jersey, Superior Court, Middlesex County.

*LIUZZI, Anthony* 5916 McKinley Street, Hollywood, Florida, on March 30, 1977, in the Broward County Circuit Court, Fort Lauderdale, Florida.

*LOHR, Markwood Dewey* 2507 East 7th Kennewick, Washington, convicted on January 13, 1981, in the Superior Court, Franklin County, Washington.

*LUYCX, Henery Lawrence* Route 1, Box 30, Wiemer, Texas, convicted on January 21, 1983, in the 228th District Court of Harris County, Houston, Texas.

*MACKRELL, Paul* 1420 Hitching Post Drive, Green River, Wyoming, convicted on December 13, 1978, in the Sweetwater County District Court, Wyoming.

*MARSHALL, Bruce Henry* 4440 Mount Brynion Road, Kelso, Washington, convicted on April 24, 1969, in the Cowlitz County Superior Court, Washington.

*MARTIN, Eugene Collins* 604 Main Street, Laurel, Maryland, convicted on March 13, 1962; and on December 18, 1963, in the Anne Arundel County Magistrate's Court, Odenton, Maryland.

*MATTHEWS, Neal Gary* 204 Greenbriar, Shelbyville, Tennessee, convicted on May 12, 1982, in the United States District Court, Middle District, Tennessee.

*McGUINNOSS, John Thomas* 347 First Avenue, New York, New York, convicted on February 8, 1982, in the Manhattan Supreme Court, Manhattan Country, New York.

*McKENZIE, Billy Martin* Post Office Box 36, Germantown, North Carolina, convicted on May 12, 1972, in the United States District Court, Greensboro, North Carolina.

*McMILLAN, James* Pioneer Circle, Miles City, Montana, convicted on October 24, 1977, in the 16th Judicial District, Miles City, Montana.

*MILLER, Matthew Joseph* 220 West Lindley Street, Philadelphia, Pennsylvania, convicted on August 24, 1979, in the City of Philadelphia District Court, Philadelphia, Pennsylvania.

*MILLER, Joseph Steven* 3649 Erato Street, New Orleans, Louisiana, on September 8, 1978, in the Orleans Parish Criminal District Court, New Orleans, Louisiana.

*MINGLEDORFF, Jeremy C.* 107–A Limoges, Duson, Louisiana, convicted in March 1980, in the Untied States District Court, Alexandria, Louisiana.

*PHILLIPS, Robert Darrell* Post Office Box 186, Lanett, Alabama, convicted on March 6, 1968, in the United States District Court of Alabama, Montgomery, Alabama.

*PEEK, Raymond Ladean* 243 North Welcome Slough, Cathlamet, Washington, convicted on November 13, 1978, in the Wahkiakum Superior Court, Washington.

*PEIZL, Ronald Duane* Rural Route 1, Box 9, Wahpeton, North Dakota, convicted on October 26, 1978, in the Richland County District Court, Wahpeton, North Dakota.

*PLIMPER, John Robert* 6601 Sivley, Houston, Texas, convicted on March 27, 1970, in the Dallas County Court, Dallas, Texas.

*POOL, Billie Ross* 1820 North East 96th Avenue, Norman, Oklahoma, convicted on October 7, 1982, in the United States District Court, Western Judicial District, Oklahoma City, Oklahoma.

*POWERS, Stephen Ray* 3634 West Potter, Phoenix, Arizona, convicted on July 20, 1981, in the Maricopa County Superior Court, Phoenix, Arizona.

*PROCTOR, Kenneth David* 127 Rice Avenue, Union, South Carolina, convicted on February 15, 1977, in the General Sessions Court, Union, South Carolina.

*RILEY, Earl D.* Post Office Box 94—Delaney Road, Plain Dealing, Louisiana, convicted on April 3, 1962, in the Logan County Circuit Court, Arkansas.

*RINGUETTE, Thomas M.* 1534 South 10th Street, Fargo, North Dakota, convicted in the First District Court, Cass County, North Dakota.

*RUSSELL, Robert James* 536 Onstott, Apartment #4, Yuba City, California, convicted on August 22, 1977, in Kitsap County Superior Court, Kitsap County, Washington.

*SAILOR, Edward Allen* 405 Alexander Street, Kingsville, Texas, convicted on April 28, 1980, in the Brooks County District Court, Texas.

*SARTAIN, Aaron L.* Route 1, Box 57–A, Detroit Michigan, convicted on June 19, 1981, in the United States District Court, Northern District, Decatur, Alabama.

*SCHAEFFER, Johnnie Leroy* 713 South C Street, Rupert, Idaho, convicted on December 15, 1861, in the 11th Judicial District, Idaho.

*SELLE, Richard S.* 1940 East County Road East, White Bear Lake, Minnesota, convicted on October 9, 1972, in the Ramsey County District Court, Saint Paul, Minnesota.

*SHOOF, Roy E.* 5415 Southern Court, Lot 41, Fort Wayne, Indiana, convicted on April 6, 1942, in the Allen County Circuit Court, Indiana.

*SULLIVAN, Rex Stuart* Rural Delivery #2, Box 328–A, Nashville, Indiana, convicted on April 3, 1973, in the 20th Judicial Circuit Court, Lee County, Florida.

*SMITH, Darrell Otis* 13935 216th Avenue East, Sumner, Washington, convicted on March 30, 1966, in the Superior Court, Yamhill, Oregon.

*SPOONER, Irvin Bernard* 129 Towne Square Drive, Newport News, Virginia, convicted on March 26, 1980, in the Eastern Judicial District Court of Virginia, Newport News, Virginia.

*STEPHEN, Kenneth Lee* 432 East Dartmoor Avenue, Cleveland, Ohio, convicted on November 12, 1980, in the United States District Court, Northern District of Ohio, Cleveland.

*STEVENSON, Storm J.* 714 North West 189th Lane, Seattle, Washington, convicted on August 15, 1979, in the King County Superior Court, Washington.

*STEWART, Ernest Glading* Route 4, Box 171, Thomasville, Georgia, convicted on March 12, 1975, in the Lowndes County Court, Valdosta, Georgia.

*STOKESBERRY, Allen Lane* Route 1 Box 422, Vanceboro, North Carolina, convicted on January 22, 1968, in the Beaufort County Superior Court, Washington, North Carolina.

*STUBER, Richard Paul* 1423 Lardner Street, Philadelphia, Pennsylvania, convicted on September 20, 1960, in the Seventh Police District Court, Philadelphia, Pennsylvania.

*SWAN, Robert Anthony, Jr.* 408 Red Pine Estates, Gilbert, Minnesota, convicted on January 25, 1980, in the Saint Louis County Superior Court, Virginia, Minnesota.

*TAMARGO, Ray* 5202 Neptune Way, Tampa, Florida, convicted on September 20, 1979, in the United States District Court, Middle Judicial District of Florida, Tampa, Florida.

*TARR, Thomas* 12451 76th Avenue, Allendale, Michigan, convicted on June 27, 1980, in the United States District Court, Grand Rapids, Michigan.

*TIERCE, Richard A.* 3005 Park Highway, Nenana, Alaska, convicted on June 14, 1979, in the Lincoln County Circuit Court, Oregon.

*TRIMBLE, Milton* 4437 Hall Park, San Antonio, Texas, convicted on November 25, 1957, in the 27th Judicial District Court, Bell County, Texas.

*TWITE, David L.* Rural Route 2, Caledonia, Minnesota, convicted on September 27, 1977, in the Houston County District Court, Caledonia, Minnesota.

*VANOURNEY, Michael Robert* Route 1, Filer, Idaho, convicted on November 30, 1978, in the Fifth Judicial District Court, Idaho.

*VOYLES, Winburn* Route 1, Garner Road, Homer, Georgia, convicted on January 28, 1968, in the De Kalb County Superior Court, Decatur, Georgia.

*WALKER, Stephen Elvin* Route 1, Box 1345, Wapato, Washington, convicted on April 27, 1977, in the Superior Court, Yakima County, Washington.

*WARREN, Francis Randolph* 550 Creek Road, Newport News, Virginia, convicted on March 2, 1966, in the Circuit Court, Hampton, Virginia.

*WEADER, Eugene E.* 3397 Hulberton Road, Halberton, New York, convicted on June 17, 1978, in the Orleans County Court, New York.

*YORK, Jesse Carter* Route 3, Box 563, Yadkinville, North Carolina, convicted on November 9, 1955; November 5, 1959; May 7, 1964; and on May 14, 1971, in the United States District Court, Winston Salem, North Carolina.

**Compliance with Executive Order 12291**

It has been determined that this notice is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Signed: August 31, 1984.

**Stephen E. Higgins,**

*Director.*

[FR Doc. 84–23988 Filed 9–10–84; 8:45 am]

BILLING CODE 4810–31–M

# Sunshine Act Meetings

Federal Register
Vol. 49, No. 177
Tuesday, September 11, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## CONTENTS



### 1

**CONSUMER PRODUCT SAFETY COMMISSION**

**TIME AND DATE:** 10:00 a.m., Wednesday, September 12, 1984.

**LOCATION:** Third Floor Hearing Room, 1111–18th Street NW., Washington, DC.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

*1. Comments to EPA on Formaldehyde ANPR*

The Commission will consider a draft letter to the Environmental Protection Agency concerning thier *Federal Register* Notice, "Formaldehyde; Determination of Significant Risk; Advance Notice of Proposed Rulemaking and Notice."

*2. Crib Corner Post Extension (Finials): Voluntary Standard Status*

The staff will brief the Commission on the status of a Voluntary Standard for Crib Corner Post Extensions (finials).

*3. FR Notice on Space Heater Revocation*

The Commission will consider a revised *Federal Register* Notice which would revoke the Commission's mandatory standard requiring the oxygen depletion sensor on unvented gas-fired space heaters (16 CFR, Part 1212).

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301–492–5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

**Sheldon D. Butts,**

*Deputy Secretary.*

[FR Doc. 84-24026 Filed 9-7-84; 10:57 am]

BILLING CODE 6355-01-M

### 2

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

September 5, 1984

**TIME AND DATE:** 10:00 a.m., Wednesday, September 12, 1984.

**PLACE:** Room 600, 1730 K Street, NW., Washington, D.C.

**STATUS:** Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The Commission will consider the following:

1. Disciplinary Proceeding (Getz Coal Sales), Docket No. D 84–1.

It was determined by a majority vote of Commissioners that this meeting be closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, (202) 653–5632.

**Jean H. Ellen,**

*Agenda Clerk.*

[FR Doc. 84-23073 Filed 9-7-84; 3:18 pm]

BILLING CODE 6735-01-M

### 3

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, September 17, 1984.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 7, 1984.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 84-24072 Filed 9-7-84; 3:12 pm]

BILLING CODE 6210-01-M

### 4

**LEGAL SERVICES CORPORATION**

Board of Directors Meeting

**PREVIOUSLY ISSUED:** September 4, 1984 (Published September 5, 1984, page 35069)

**PREVIOUSLY ANNOUNCED TIME AND DATE:** It will commence at 9:30 a.m. and continue unitl all official business is completed; Friday September 14, 1984.

**CHANGE IN NOTICE:** Deletion under **MATTERS TO BE CONSIDERED:**

Report from the Office of Field Services —Budget and Reorganization

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Opsut, Executive Office, (202) 272–4040.

**DATE ISSUED:** September 7, 1984.

**Donald P. Bogard**

*President.*

[FR Doc. 84-24095 Filed 9-7-84; 4:36 pm]

BILLING CODE 6820-35-M

### 5

**NATIONAL TRANSPORTATION SAFETY BOARD**

**[NM-84-30]**

**TIME AND DATE:** 9 a.m., Tuesday, September 18, 1984.

**PLACE:** NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

**STATUS:** The first six items are open to the public; the remaining two items is closed under Exemption 10 of the Government in the Sunshine Act.

**MATTERS TO BE CONSIDERED:**

1. *Aircraft Accident Report*—Air Canada Lockheed L-1011, CFTN], near Charleston, South Carolina, November 24, 1983.
2. *Marine Accident Report*—Capsizing of the U.S. Offshore Supply Vessel LAVERNE HEBERT, Gulf of Mexico, November 9, 1983.
3. *Safety Study*—The Drunk Driver as a Repeat Offender.
4. *Railroad Accident Report*—Collision of Amtrak Train No. 301 on Illinois Central Gulf Railroad with Marquette Motor Service Terminals, Inc., Delivery Truck, Wilmington, Illinois, July 28, 1983.
5. *Brief of Aviation Accident*—Lindale, Texas.

6. *Brief of Aviation Accident*—File No. 1928; Beech H35, N4687D, Tucson, Arizona, February 16, 1983.

7. *Opinion and Order:* Aministrator v. Buford, Docket SE–2555; disposition of the Administrator's appeal.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382–6525.

**H. Ray Smith, Jr.,**
*Federal Register Liaison Officer.*

[FR Doc. 84–24056 Filed 9–7–84; 1:36 pm]
BILLING CODE 7533–01–M

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6

**NATIONAL TRANSPORTATION SAFETY BOARD**

**[NM–84–29]**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 49 FR 34329, August 29, 1984.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 9 a.m., Wednesday, September 5, 1984.

**CHANGE IN MEETING:** A majority of the Board determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. The following item was discussed in open session:

*Staff recommendation* not to hold a public hearing or deposition proceeding on the rear-end collision involving an intercity bus and a tractor semitrailer near Cheyenne, Wyoming, on July 18, 1984.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, (202) 382–6525.

**H. Ray Smith, Jr.,**
*Federal Register Liaison Officer.*
September 7, 1984.

[FR Doc. 84–24057 Filed 9–7–84; 1:36 pm]
BILLING CODE 7533–01–M

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7

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of September 10, 17, 24, 1984 and Week of October 1, 1984.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of September 10**

*Monday, September 10*

2:00 p.m.
Briefing on Steam Generator Generic Requirements (Public Meeting)

*Tuesday, September 11*

2:00 p.m.
Briefing on BWR Pipe Crack Report (Long Range Plan) (Public Meeting)

*Thursday, September 13*

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

**Week of September 17**

Tentative

*Wednesday, September 19*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

*Thursday, September 20*

10:00 a.m.
Industry Views on Decommissioning (Public Meeting)
2:00 p.m.
Quarterly Progress Report on Safety Goal Evaluation Report (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

*Friday, September 21*

10:00 a.m.
Discussion of Board Order in Shoreham (Open/Closed to be determined)
2:00 p.m.
Discussion of Remaining Questions on Backfitting (Public Meeting)

**Week of September 24**

Tentative

*Thursday, September 27*

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

**Week of October 1**

Tentative

*Tuesday, October 2*

10:00 a.m.
Briefing/Possible Vote on UCS 2.206 Petition on TMI–1 Emergency Feedwater (Public Meeting)
2:00 p.m.
Continuation of 9/5 Discussion of Indian Point Probabilistic Risk Assessment (Public Meeting)

*Wednesday, October 3*

2:00 p.m.
Discussion of Reexamination of Exemption Process (Public Meeting)

*Thursday, October 4*

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Callaway-1 (Public Meeting)
2:00 p.m.
Semi-Annual Briefing on Appraisal of Operating Experience (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

**TO VERIFY THE STATUS OF MEETINGS CALL:** (Recording)—(202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Julia Corrado (202) 634–1410.

**George Mazuzan,**
*Office of the Secretary.*

[FR Doc. 84–24080 Filed 9–7–84; 3:47 pm]
BILLING CODE 7590–01–M

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8

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 10, 1984, at 450 Fifth Street, NW., Washington, D.C.

An open meeting will be held on Tuesday, September 11, 1984 at 10:00 a.m., in Room 1C30, followed by a closed meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, September 11, 1984, at 10:00 a.m., will be:

Consideration of an application filed by Vanguard Special Tax-Advantaged Retirement Fund, et al. requesting an order of the Commission, pursuant to Sections 6(c) and 17(d) of the Investment Company Act of 1940 and Rule 17d–1 thereunder, to permit the Vanguard Special Tax-Advantaged Retirement Fund to acquire shares of funds within the Vanguard Group of Investment Companies in excess of the limitations imposed by Section 12(d)(1) of the Act, and to permit certain affiliated transactions otherwise prohibited by Section 17. For further information, please contact Mary A. Cole at (202) 272–3023.

The subject matter of the closed meeting scheduled for Tuesday, September 11, 1984, following the 10:00 a.m. open meeting, will be:

Regulatory matter regarding self-regulatory organizations.

Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: William Fowler at (202) 272–3077.

**Shirley E. Hollis,**

*Acting Secretary.*

September 6, 1984.

[FR Doc. 84–24047 Filed 9–7–84: 12:25 pm]

BILLING CODE 8010–01–M

federal register

Tuesday
September 11, 1984

Part II

# Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816, 817, and 855

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Parts 816, 817, and 855**

# Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Use of Explosives; General Requirements; Certification of Blasters in Federal Program States and on Indian Lands

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise its rules at 30 CFR Parts 816 and 817, and to add a new rule at 30 CFR Part 855. This proposed rule is needed to comply with 30 CFR 850.12, which requires that each regulatory authority promulgate a blaster certification program for surface coal mining operations.

The proposed rule would add identical provisions to 30 CFR 816.61(c)(4) and 817.61(c)(4), which currently impose similar requirements on surface and underground coal mining operations respectively. In each of these sections two new paragraphs would require that any person responsible for blasting operations at a blasting site: (1) Have a current blaster certificate; and (2) give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives. In addition, the proposed rule would revise § 817.61(c)(4) by deleting the existing requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan."

Proposed 30 CFR Part 855 would govern the training, examination and certification of blasters by OSM for surface coal mining operations in Federal Program States and on Indian lands. It would apply to the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity for a holder of a certificate issued by a State regulatory authority.

**DATES:** OSM will accept written comments on this proposed rule until 5 p.m. eastern time on October 11, 1984. Upon request, OSM will hold public hearings on this proposed rule at 9:30 a.m. eastern time on October 9, 1984.

*Public Hearings:* Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, Denver, Colorado, and Knoxville, Tennessee at 9:30 a.m. local time on November 13, 1984. Upon request, OSM also will hold public hearings in the State of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced. The deadline for requesting a hearing is 5:00 p.m. eastern time on October 23, 1984.

**ADDRESS:**

*Written comments:* Hand-deliver to the Office of Surface Mining, Administrative Record, Room 5315, 1100 L Street, NW., Washington, DC; or mail to the Office of Surface Mining, Administrative Record, Room 5315L, 1951 Constitution Avenue, NW., Washington, DC 20240.

*Public hearings:* Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue, SE., Knoxville, Tennessee. The address for any hearing scheduled in the State of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, or Washington will be announced prior to the hearing.

**FOR FURTHER INFORMATION CONTACT:** James Kress, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: 202–343–5361 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:**



## I. Public Comment Procedures

### *Written Comments*

Written comments submitted on this proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any change that is recommended. OSM requests that, where practicable, commenters submit five copies of their comments (see "**ADDRESSES**"). Comments received after the close of the comment period (see "**DATES**") may not be considered or included in the Administrative Record for the final rule.

### *Public Hearing*

OSM will hold public hearings on the proposed rule on request only. The times and locations scheduled for the hearings are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). Any person interested in making an oral or written presentation at a hearing should inform James Kress (see "**FOR FURTHER INFORMATION CONTACT**") of the desired hearing location by 5:00 p.m. eastern time four working days prior to the scheduled date of the hearing. If no one has contacted Mr. Kress to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

## II. Background

The current OSM rules governing the training, examination and certification of blasters are codified at 30 CFR Chapter VII, Subchapter M. Part 850 of Subchapter M, 44 FR 9492 (March 4, 1983), establishes requirements and procedures applicable to the development of regulatory programs for such training, examination and certification. Section 850.5 defines the term "blaster" as "a person directly responsible for the use of explosives in surface coal mining operations who is certified under this part."

Section 850.12 provides that "[t]he regulatory authority is responsible for promulgating rules governing the training, examination, certification and enforcement of a blaster certification program for surface coal mining operations." Subsequent sections of Part 850 require that such a program include specified procedures. OSM is the "regulatory authority" and thus is responsible for promulgating a blaster certification program in States with a Federal program for the regulation of surface coal mining operations, and on Indian lands. This rule is proposed by OSM to meet these requirements of Part 850.

The purview of the proposed rule is limited to Federal Program States and Indian lands. For Federal lands in a State with a State regulatory program, the training, examination and certification of blasters is governed by the State program, regardless of whether or not there is a Federal-State

cooperative agreement. 30 CFR 740.11(a).

## III. Discussion of Proposed Rule

*Part 816—Permanent Program Performance Standards—Surface Mining Activities*

Section 816.61 Use of Explosives: General Requirements

Section 850.12 of 30 CFR requires that the regulatory authority promulgate rules governing the enforcement of a blaster certification program. A prerequisite to such enforcement is a requirement that a person responsible for blasting operations at a blasting site have a current blaster certificate. This requirement currently is implicit in several provisions of 30 CFR 816.61, which contains general requirements for the use of explosives in surface mining activities, but is not explicitly stated. To eliminate any potential ambiguity, OSM proposes to revise § 816.61(c)(4)(ii) to explicitly require that any person responsible for blasting operations at a blasting site have a current blaster certificate.

Section 850.13 of 30 CFR requires that the regulatory authority establish procedures which require that persons who are not certified and who are assigned to a blasting crew or assist in the use of explosives receive direction and on-the-job training from a blaster. Since the ultimate responsibility for safe blasting operations lies with the blaster responsible for operations at a blasting site, and since providing direction and on-the-job training to the blasting crew is necessary for safe operations, OSM proposes to impose the requirement of § 850.13 directly on the blaster at the blasting site. Accordingly, OSM proposes to revise § 816.61(c)(4)(iii) to require that any person responsible for blasting operations at a blasting site give direction and on the job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

*Part 817—Permanent Program Performance Standards—Underground Mining Activities*

Section 817.61 Use of Explosives: General Requirements

Section 817.61(c) of 30 CFR, which governs underground mining activities, currently contains provisions similar to those of 30 CFR 816.61(c), which governs surface mining activities. OSM proposes to revise § 817.61(c)(4) in the same way and for the same reasons as were stated in the preceding paragraph for § 816.61(c)(4).

In addition, OSM proposes to revise § 817.61(c)(4) by deleting the existing requirement that persons responsible for blasting operations at a blasting site be familiar with "the blasting plan." The reference to a blasting plan was included in § 817.61(c)(4) inadvertently when two similarly worded rules were promulgated concerning the use of explosives for surface and underground mining activities. 48 FR 9486 (March 4, 1983). However, as was explained in the preamble to the final rule at 30 CFR 780.13(a), which requires that an application for surface mining activites include a blasting plan, a blasting plan is not required for underground mining activities. 48 FR 9789 (March 8, 1983). Thus, the reference to a blasting plan in existing § 817.61(c)(4) is incorrect and should be deleted.

*Part 855—Certification of Blasters in Federal Program States and on Indian Lands*

Section 855.1 Scope

Proposed Part 855 would establish rules pursuant to 30 CFR Part 850 for the training, examination and certification of blasters by OSM for surface coal mining operations in Federal Program States and on Indian lands. It would govern the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, and reciprocity for a holder of a certificate issued by a State regulatory authority.

As explained previously (see: II. Background), Part 855 would apply to operations where OSM is the regulatory authority, specifically in Federal Program States and on Indian lands. For Federal lands in a State with a Federal program, Part 855 would govern the certification of blasters. For Federal lands in a State with a State program, and whether or not there were a Federal-State cooperative agreement, the State program would govern.

Part 850, on which this proposed part is based, provides in § 850.15(c) for the "recertification" of blasters. In drafting Part 855 it was found that the exclusive use of the word "recertification" would reduce the grammatical clarity of the rule. For this reason, the words "reissue" "reissuance" and "recertification" are used in the proposed rule with equivalent meaning.

Section 855.10 Information Collection

The information collection requirements in Part 855 are contained in §§ 855.12(a) and 855.13(b). The former requires that an applicant include with his or her application satisfactory evidence of having completed training in the use of explosives. The latter requires that an applicant provide on an OSM application form information pertinent to determining his or her qualifications for a blaster certificate, and ultimately to identifying him or her as the certificate holder. While the application form itself would require that an applicant state his or her training in the storage, use and transportation of explosives, for clarity and emphasis this same requirement is repeated in § 855.12(a).

Section 855.11 General Requirements

This section would list in one place the general requirements a person must meet to qualify for an OSM blaster certificate. To qualify, a person would have to: (1) Be at least 18 years old; (2) be qualified and have worked as a blaster for at least 2 of the 3 years prior to submitting an application; or have worked under the direction of and received on-the-job training, including practical field experience in blasting operations, from a blaster for at least 2 of the 3 years prior to submitting an application; (3) be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations; (4) complete blaster training as specified in § 855.12; (5) submit an application and pay a fee as specified in § 855.13; (6) pass a written and practical examination as specified in § 855.14; and (7) not be subject to suspension, revocation or other action under § 855.17.

Section 855.11(a) is intended to give a potential applicant an overview of what he or she must do to qualify for an OSM blaster certificate. Most of these qualifications are defined in greater detail elsewhere in this part. Section 855.11(b) informs the potential applicant that the specific procedures necessary to qualify depend on his or her current certification status, as specified in the subsequent sections of this part.

The specific requirements in § 855.11 derive primarily from Part 850. Two exceptions are the minimum age limit of § 855.11(a)(1) and the minimum experience requirement of § 855.11(a)(2). OSM proposes that 18 years is the minimum age at which a person reasonably might be expected to have the requisite experience, competence, training and knowledge consistent with the acceptance of responsibility for blasting operations.

Likewise, as the minimum qualifying experience OSM proposes to require

that prior to applying for an OSM blaster certificate an applicant either have been qualified and worked for at least 2 of the 3 preceding years as a blaster, or have worked for a similar period under the direction of a blaster. Although the definition of "blaster" in § 850.5 includes only those persons certified under Part 850, in the transition period immediately following promulgation of this rule OSM would interpret the word "blaster" in this section broadly to include any person who is licensed, certified or otherwise authorized by OSM or a State to conduct blasting operations. This would give an applicant in the transition period credit for blasting experience gained prior to the availability of certification under this rule. OSM solicits comment on the specific types of authority to conduct blasting operations that should be recognized as qualifying an applicant in this transition period.

Section 855.12 Training

Section 855.12(a) would require that an applicant complete within 3 years prior to applying for an OSM blaster certificate OSM or equivalent training in the subjects specified in 30 CFR 850.13(b). It also would require that the applicant include with his or her application satisfactory evidence of having completed such training. The requirement for satisfactory evidence is included to impose on the applicant the burden of proof in cases where OSM has any reason to doubt either the equivalence or completion of such training.

Section 855.12(b)(1) would require that OSM provide courses or otherwise ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations. This would implement the requirement of § 850.13(b) that "[t]he regulatory authority shall ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations." Such training would include all of the subjects specified in 30 CFR 850.13(b).

Section 855.12(b)(2) would allow OSM to modify the training required of an applicant for reissuance of a certificate in a way that would reflect the training the applicant previously had received. Under this provision, OSM would be able to design the training of an applicant for recertification to eliminate duplication and to reflect any developments that might have occurred since he or she last received blaster training. Where appropriate, OSM under this provision could waive the training requirement entirely.

Section 855.13 Application and fee

Section 855.13(a) would require that any person seeking an OSM blaster certificate: (1) Complete and submit to OSM an application on a prescribed form; (2) submit with the application a nonrefundable fee; and (3) for certificate issuance, renewal or reissuance, submit the application and fee at least 60 days in advance of the desired date of examination, certificate expiration, or a combination of both.

Section 855.13(b) would require that OSM make available to any person an application form on which each applicant would be required to provide specified information regarding his or her qualifications for an OSM blaster certificate, and such additional information as OSM may require. It also would require that OSM explain on the form any differences in the information required for certificate issuance, renewal or reissuance, replacement of a lost or destroyed certificate, or a certificate through reciprocity. The form would include a statement in accordance with law that the information provided is true and accurate in the best knowledge and belief of the applicant, and would require the signature of the applicant.

OSM proposes to use a prescribed application form to simplify the application process from the standpoint of both the applicant and OSM. The form would assist the applicant in determining and providing the information required for each of the various categories of certificate. It also would assist OSM by imposing on the application process a high degree of organization, uniformity and consistency. The information specified in the rule is the minimum required by OSM to review an applicant's qualifications and process an OSM blaster certificate.

The fee schedule in § 855.13(a)(2) is proposed under the authority of section 9701 of Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701), which prior to editorial revision and recodification was section 501 (31 U.S.C. 483(a)) of the Independent Offices Appropriation Act (IOAA). Section 9701 authorizes an agency to prescribe regulations establishing the charge for a service or thing of value provided by the agency. The charge shall be fair and based on the costs to the government, the value of the thing or service to the recipient, the public policy or interest served, and other relevant facts.

The fees in § 855.13(a)(2) were derived by calculating the direct and indirect costs OSM expects to incur in the certification process. For the issuance or reissuance of a certificate, the application fee includes the cost of an examination. For renewal or replacement of a certificate, or a certificate through reciprocity, the fee includes only the cost of processing the application and certificate, since no examination is required. There would be no additional fee for a temporary certificate, the cost of which would be covered by the underlying application fee. OSM is not proposing at this time a fee for the training of blasters, but may do so after the cost of providing such training is determined.

As shown by the following table, the proposed fee for the issuance or reissuance of an OSM blaster certificate is $122. This would include the cost OSM expects to incur in the clerical processing and technical review of the application; developing, administering, renting the facility for, and grading the examination; and processing the certificate.

FEE CALCULATION FOR CERTIFICATE ISSUANCE AND REISSUANCE

| Activity | Time allotted (hours/appl.) | Clerical (GS–4) (per hour) | Technical (GS–9) (per hour) | Cost/applicant |
|---|---|---|---|---|
| **Application** | | | | |
| Clerical processing | 2 | $7 | | $14 |
| Technical review | 3 | | $11 | 33 |
| **Examination** | | | | |
| Develop | [1] 3 | | 11 | 33 |
| Administer | [2] 0.2 | | 11 | 2 |
| Facility | | | | [3] 4 |
| Grading | 2 | | 11 | 22 |
| **Certification** | | | | |
| Process certificate | 2 | 7 | | 14 |
| Total | | | | 122 |

[1] 300 hours/exam/year divided by 100 applicants/exam/year.
[2] 5 hours/exam divided by 25 applicants/exam.
[3] $100/exam divided by 25 applicants/exam.

The proposed fees for certificate renewal and for a certificate through reciprocity are each $61. The fee calculation for these certificates is similar to that for issuance and reissuance, except that examination is not included. For certificate replacement the proposed fee is $28, which includes only the cost of the clerical processing of the application and certificate.

OSM has proposed the deadlines for submission of an application in § 855.13(a)(3) to provide sufficient time for administrative processing of the application and examination of the applicant. Under this provision the applicant is responsible for submitting an application in sufficient time to prevent the lapse of his or her certification, to take an examination, or to obtain a certificate by a desired date. Unless a temporary certificate is issued,

a person whose certificate has expired may not conduct blasting operations until the certificate is renewed or reissued, or a new certificate is issued. Thus, failure to file a timely application may result in the lapse of a blaster's certificate, and the inability to work as a blaster. The specified periods are the minimum needed by OSM to ensure timely processing of an application and examination of the applicant. The direct consequence of a failure to comply with these minimum periods would be limited to a potential delay in certificate issuance, renewal or reissuance.

While subsequent § 855.15(e) provides that OSM may issue a temporary certificate to an applicant who demonstrates that his or her OSM blaster certificate has expired for reasons beyond his or her control, OSM has not included in the proposed rule any general provision governing the renewal or reissuance of an expired certificate. However, it is foreseeable that a certificate holder may through oversight or otherwise apply for renewal or reissuance of an already expired certificate. OSM solicits comments on how to deal with this situation, and particularly whether there should be a deadline, such as one year, following certificate expiration after which an applicant would have to meet the qualifications and follow the procedures for initial certificate issuance.

Section 855.14 Examination

Section 855.14(a) would require that an applicant for the issuance or reissuance of an OSM blaster certificate pass, and § 855.14(b) would require that OSM schedule and hold, a written and practical examination on the subjects required by 30 CFR 850.14. Section 855.14(a) would require that the applicant pass the examination after submitting his or her application to clearly indicate that passing a previous examination does not fulfill this requirement. The examination at a minimum would include an objective question test, a blasting log simulation problem, and a practical wiring simulation problem.

An applicant who desired to take a scheduled examination would be required by proposed § 855.13(a)(3) to submit his or her application to OSM at least 60 days prior to the examination date. Under proposed § 855.13(b), the applicant would specify the desired examination date in the application itself. This filing deadline would enable OSM to process the application and determine in advance the personnel and facilities necessary to meet the demand for an examination. It is expected that OSM routinely would circulate an examination schedule for the information of prospective applicants.

Section 855.14(b)(3) would authorize OSM to modify the examination given to an applicant for certificate reissuance (recertification) to reflect previous examination. Under this provision, OSM would be able to design the examination for an applicant for recertification to eliminate duplication and to reflect any developments that might have occurred since he or she last was examined. Where appropriate, this would enable OSM to waive the examination requirement entirely.

Section 855.14(c) would allow an applicant who fails an examination to apply for reexamination. However, no person could take more than 2 examinations in one 12 month period. OSM has proposed this limit to ensure that candidates for reexamination allot sufficient time to study and gain the practical experience necessary to prevent repeated examination failures. Because a significant amount of time may elapse between failure and reexamination, with corresponding changes in the information provided by the applicant, a candidate for reexamination would be required to submit an entire new application. Because the costs associated with processing the new application and conducting the reexamination would be the same as for the original application, a new fee also would be required.

Section 855.14(d) would authorize OSM to reject the application of anyone who, without good cause, fails to attend an examination after OSM has granted his or her request for admission.

Section 855.15 Certification

Section 855.15(a) would require OSM to motify an applicant for certificae issuance or reissuance: (1) Either that his or her application is timely and complete, or of any deficiency; and (2) that his or her request for admission to a scheduled examination either is granted or denied. This requirement would not apply to applications for certificate renewal or replacement, or for a certificate through reciprocity, because they would not involve the long processing times required for certificate issuance and reissuance. For the former types of certification, the grant or denial of the certificate itself by OSM would give the applicant sufficient timely notice of the status of his or her application.

Section 855.15(b) would require OSM to: (1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the required training, passes the required examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations; (2) renew one time the OSM blaster certificate of any qualified applicant; (3) replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed; or (4) issue, renew, reissue or replace an OSM blaster certificate through reciprocity as provided in subsequent § 855.16. The term "qualified applicant" is included in this section to ensure that all of the requirements of this part are taken into consideration by OSM in the certification process.

The terms for which OSM would issue, renew, reissue or replace a blaster certificate are specified by § 855.15(c). OSM would issue an initial certificate for a term to expire 3 years from the date of issuance. OSM would renew or reissue a certificate for a term to expire 3 years from the expiration date of the applicant's current certificate. This would provide for continuity of certification without penalizing an applicant who seeks early renewal or reissuance, and without extending the certification of a later applicant. A replacement certificate would expire on the same date as the applicant's lost or destroyed certificate.

A certificate issued, renewed or reissued through reciprocity would expire 60 days after the expiration date of the corresponding State certificate. The 60 day extension would avoid a potential lapse of OSM certification in the period when OSM is processing a reciprocity application. Since an applicant could seek reciprocity only after the corresponding state certificate were renewed or reissued, the OSM renewal or reissuance process would necessarily lag behind that of the State. If the State and OSM certificates expired on the same date it might not be possible to apply to OSM for renewal or reissuance before the OSM certificate expired.

Section 855.15(d) would prohibit OSM from renewing a certificate more than one time. This limitation to a single renewal is necessary to ensure that at 6 year intervals blasters receive the training and examination required to maintain and establish the competence, knowledge and experience necessary to accept responsibility for blasting operations. A blaster who held a renewed certificate and desired to maintain his or her certification would be required to apply to OSM for recertification before his or her certificate expired.

Section 855.15(e) would authorize OSM to issue a temporary OSM blaster certificate for a maximum term of 90 days to an applicant who demonstrates that his or her current certificate is about to expire for reasons beyond his or her control.

Section 855.15(f) would require that the holder of an OSM blaster certificate comply with the conditions specified in 30 CFR 850.15(d) and 850.15(e). These conditions concern protection of a certificate, exhibiting a certificate upon request, and prohibitions against the assignment or transfer of a certificate and ther delegation of a blaster's responsibility.

Section 855.16 Reciprocity

Secion 855.16(a) would allow any person who holds a current blaster certificate issued by a State regulatory authority under an OSM-approved State blaster certification program with rules not less effective than proposed Part 855 to apply to OSM for a blaster certificate through reciprocity. The State must have an approved blaster certification program, and not merely an approved State Program, since in some instances the latter might exist without the former.

Section 855.16(b) would authorize OSM to issue, renew or reissue an OSM blaster certificate to a qualified applicant for a certificate through reciprocity who demonstrates that he or she, and whom OSM finds, has a current blaster certificate issued, renewed or reissued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than proposed Part 855. The requirement that the State certification program be "no less effective" is intended to encompass all of the requirements of this proposed part, and particularly those governing the frequency and content of training and examination, and the term of certification. OSM proposes to grant reciprocity to qualified applicants to avoid unnecessary duplication of the certification process, but not at the expense of compromising any of these requirements.

The application and fee procedures for a certificate through reciprocity would be as specified in § 855.13, the term and conditions of certification would be as specified in §§ 855.15(c) and 855.15(f), and suspension and revocation would be governed by § 855.17.

Where the original certificate were issued through reciprocity, § 855.16(c) would allow renewal or reissuance only through reciprocity, and only if the corresponsing State certificate were renewed or reissued by the State regulatory authority. This provision would prevent an applicant from using reciprocity as the initial step toward full OSM certification. An applicant issued an OSM certificate through reciprocity would have to continue to rely on reciprocity unless he or she applied directly for full OSM certification.

Section 855.16(d) would authorize OSM to replace the OSM blaster certificate on any qualified applicant who presented satisfactory evidence that his or her certificate issued, renewed or reissued through reciprocity was lost or destroyed.

Section 855.17 Suspension and revocation

Section 855.17(a) would authorize, or upon a finding of willful conduct of the blaster require, OSM to suspend for a definite or indefinite period, revoke, or take other necessary action on the certificate of a blaster for any of the reasons stated in 30 CFR 850.15(b). These reasons include noncompliance with any order of the regulatory authority; unlawful use in the workplace of, or current addiction to, alcohol, narcotics or other dangerous drugs; violation of any provision of State of Federal explosives laws, or regulations; and providing false information or a misrepresentation to obtain certification. OSM would be required to make the nature and duration of the suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it. Where OSM has reliable information which demonstrates that the storage, use or transportation of explosives by a blaster is likely to threaten public safety or the environment, OSM would be required to suspend the certificate of the blaster as soon as is practicable.

Section 855.17(b) would require that, when practicable, OSM provide to the affected blaster written notice and the opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. It would require OSM to limit any action taken without such notice and opportunity to a temporary suspension pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

Section 855.17(c) would require OSM to notify the affected blaster of its final decision on his or her OSM blaster certificate, including the reason for any suspension, revocation or other action, by certified mail within 30 days after written notice and the opportunity for an informal hearing. OSM seeks public comment suggesting specific procedures that might be included in the rule to facilitate the required informal hearing process. If the affected certificate were issued through reciprocity, OSM would be required to notify the State regulatory authority of its action. A person whose OSM blaster certificate is suspended, revoked or subjected to other action would have the right to appeal the decision of OSM to the Department of the Interior Board of Land Appeals.

Section 855.17(d) would require that upon receiving notice of suspension, revocation or other action a blaster immediately surrender to OSM his or her OSM blaster certificate.

Section 855.17(e)(1) would allow a person whose OSM blaster certificate is suspended for an indefinite term to seek reinstatement by submitting to OSM evidence that the cause of the suspension has been corrected.

Section 855.17(e)(2) would allow a person whose OSM blaster certificate was revoked to apply to OSM for recertification, and would require that he or she include in the application evidence that the cause of the revocation has been corrected.

Section 855.17(f)(1) would require that OSM reinstate a suspended OSM blaster certificate when the term of a definite suspension expires, or when OSM finds that the cause of an indefinite suspension has been corrected, by returning the certificate to the blaster with notice of reinstatement.

Section 855.17(f)(2) would authorize OSM to reissue an OSM blaster certificate to an applicant whose certificate was revoked if OSM finds that the cause of the revocation has been corrected, and that the applicant meets all other applicable requirements of this part.

Section 855.17(g) would require that OSM suspend, revoke or take other action on an OSM blaster certificate issued, renewed or reissued through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

## IV. Procedural Matters

*Federal Paperwork Reduction Act*

The information collection requirements in the proposed rule have been submitted to the Office of Management and Budget under 44 U.S.C. 3507. The information is needed to meet the requirements of sections 504, 515, 516, 710 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

*Executive Order 12291*

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis. The proposed changes will not have an inimical effect on the investment or productivity of United States coal operators. Employment in the coal industry will not be adversely affected since the rule would not affect coal production procedures. There also would be no deleterious effect on the ability of United States coal operators to compete with foreign coal operators in the domestic or export markets.

*Regulatory Flexibility Act*

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic impact on a substantial number of small entities because the cost to an operator or a blaster for a certificate is minimal.

*National Environmental Policy Act*

To the extent the proposed rule would govern the certification of blasters in Federal Program States it is part of a Federal program, the promulgation of which is exempt under section 702(d) of SMCRA, 30 U.S.C. 1292(d), from compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C).

To the extent the proposed rule would govern the certification of blasters on Indian lands, OSM has prepared a draft environmental assessment (EA) and has made interim finding that it would not significantly affect the quality of the human environment. The draft EA is on file in the OSM Administrative Record at the address listed previously (see "ADDRESSES"). A final EA will be completed and a final finding made on the significance of any resulting impacts prior to issuance of the final rule.

**List of Subjects**

*30 CFR Part 816*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

*30 CFR Part 817*

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

*30 CFR Part 855*

Coal mining, Explosives, Indian lands, Intergovernmental relations, Safety, Surface mining, Training program, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 816 and 817, and add Part 855 as follows:

Dated: June 28, 1984.

**Leona A. Power,**

*Acting Assistant Secretary for Land and Minerals Management.*

## PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for Part 816 reads as follows:

**Authority:** Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*), unless otherwise noted.

2. Paragraph (c)(4) of § 816.61 is revised to read as follows:

**§ 816.61 Use of explosives: General requirements.**

* * * * *

(c) * * *

(4) Any person responsible for blasting operations at a blasting site shall—

(i) Be familiar with the blasting plan and site-specific performance standards;

(ii) Have a current blaster certificate; and

(iii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

## PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 reads as follows:

**Authority:** Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*).

4. Paragraph (c)(4) of § 817.61 is revised to read as follows:

**§ 817.61 Use of explosives: General requirements.**

* * * * *

(c) * * *

(4) Any person responsible for blasting operations at a blasting site shall—

(i) Be familiar with the site-specific performance standards;

(ii) Have a current blaster certificate; and

(iii) Give direction and on-the-job training to persons who are not certified and who are assigned to the blasting crew or assist in the use of explosives.

## SUBCHAPTER M—TRAINING, EXAMINATION, AND CERTIFICATION OF BLASTERS

5. In Subchapter M, Part 855 is added as follows:

## PART 855—CERTIFICATION OF BLASTERS IN FEDERAL PROGRAM STATES AND ON INDIAN LANDS

Sec.



**Authority:** Pub. L. 95–87 (30 U.S.C. 1201 *et seq.*). Sec. 855.13 also issued under sec. 9701, Pub. L. 97–258 (31 U.S.C. 9701).

**§ 855.1 Scope.**

This part establishes rules pursuant to Part 850 of this chapter for the training, examination and certification of blasters by OSM for surface coal mining operations in States with Federal programs and on Indian lands. It governs the issuance, renewal, reissuance (recertification), suspension and revocation of an OSM blaster certificate, replacement of a lost or destroyed certificate, reciprocity for a holder of a certificate issued by a State regulatory authority.

**§ 855.10 Information collection.**

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number ————. This information is needed to meet the requirements of sections 504, 515 and 719 of Pub. L. 95–87, and will be used by OSM in the certification of blasters. The obligation to respond is mandatory.

**§ 885.11 General requirements.**

(a) To qualify for an OSM blaster certificate, a person shall—

(1) Be at least 18 years old;

(2) Have been qualified and worked as a blaster for at least 2 of the 3 years prior to submitting an application; or have worked under the direction of and received on-the-job training, including practical field experience in blasting operations, from a blaster for at least 2 of the 3 years prior to submitting an application;

(3) Be competent, possess practical knowledge of blasting techniques, understand the hazards involved in the use of explosives, and exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;

(4) Complete blaster training as specified in § 855.12;

(5) Submit an application and pay a fee as specified in § 855.13;

(6) Pass a written and practical examination as specified in § 855.14; and

(7) Not be subject to suspension, revocation or other action under § 885.17.

(b) The specific procedures by which an applicant shall qualify for an OSM blaster certificate under paragraph (a) of this section depend on his or her current certification status. These procedures are specified in the subsequent sections of this part.

**§ 855.12 Training.**

(a) Within 3 years prior to applying to OSM for the issuance or reissuance of an OSM blaster certificate a person shall complete OSM or equivalent training in the subjects specified in § 850.13(b) of this chapter. An applicant shall include in his or her application satisfactory evidence of having completed such training.

(b)(1) OSM shall provide courses or otherwise ensure that courses are available to train persons responsible for the use of explosives in surface coal mining operations in all of the subjects specified in § 850.13(b) of this chapter.

(2) OSM may modify the training required of an applicant for certificate reissuance (recertification) to reflect previous training.

**§ 855.13 Application and fee.**

(a) Any person seeking an OSM blaster certificate shall—

(1) Complete and submit to OSM an application on the form prescribed by paragraph (b) of this section;

(2) Submit with the application a nonrefundable fee as follows—

| | |
|---|---|
| (i) Issuance or reissuance of certificate | $122 |
| (ii) Renewal of certificate | $61 |
| (iii) Replacement of certificate | $28 |
| (iv) Certificate through reciprocity | $61 |

; and

(3) For certificate issuance, renewal or reissuance, submit the application and fee in advance of the date of examination or certificate expiration, as follows—

(i) For certificate issuance, not less than 60 days before the date on which the applicant desires to take a scheduled examination;

(ii) For certificate renewal, not less than 60 days before the expiration date of the applicant's current certificate; or

(iii) For certificate reissuance, not less than 60 days before the date on which the applicant desires to take a scheduled examination that will be held at least 60 days before the expiration date of the applicant's current certificate.

(b) OSM shall make available to any person seeking an OSM blaster certificate an application form on which each applicant shall state his or her: name; address; date of birth; Social Security number; height; weight; color of hair and eyes; highest level of education; training in the storage, use and transportation of explosives; blasting experience; employment history; blaster license and certification history; desired date of examination; date of application; and such additional information as OSM may require. OSM shall explain on the form any differences in the information required for certificate issuance, renewal or reissuance, replacement of a lost or destroyed certificate, or a certificate through reciprocity. The form shall include a statement in accordance with law that the information provided is true and accurate in the best knowledge and belief of the applicant, and shall require the signature of the applicant.

**§ 855.14 Examination.**

(a) After submitting his or her application, each applicant for the issuance or reissuance of an OSM blaster certificate shall pass a written and practical examination, as specified in paragraph (b) of this section.

(b)(1) On a regular basis OSM shall schedule and hold a written and practical examination on the technical aspects of blasting, and State and Federal laws governing the storage, use and transportation of explosives, as specified in § 850.14 of this chapter.

(2) The examination at a minimum shall include—

(i) An objective question test;

(ii) A blasting log simulation problem; and

(iii) A practical wiring simulation problem.

(3) OSM may modify the examination given to an applicant for certificate reissuance (recertification) to reflect previous examination.

(c) An applicant who fails an examination may apply for reexamination, but no person may take an examination more than 2 times in one 12 month period. A person who seeks reexamination shall submit a new application and fee.

(d) Except where the applicant demonstrates and OSM finds good cause, OSM may reject the pending application of anyone who fails to attend an examination after OSM has granted his or her request for admission.

**§ 855.15 Certification.**

(a) *Acknowledgement of application.* Upon receiving an application for certificate issuance or reissuance, OSM shall notify the applicant either that his or her application is timely and complete, or of any deficiency, and that his or her request for admission to a scheduled examination either is granted or denied.

(b) *Certificate issuance, renewal, reissuance (recertification) and replacement.* OSM shall—

(1) Issue or reissue an OSM blaster certificate to any qualified applicant who completes the required training, passes the required examination, and is found by OSM to be competent and to have the necessary knowledge and experience to accept responsibility for blasting operations;

(2) Renew one time the OSM blaster certificate of any qualified applicant;

(3) Replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate was lost or destroyed; or

(4) Issue, renew, reissue or replace an OSM blaster certificate through reciprocity as provided in § 885.16.

(c) *Term of certificate.* OSM shall issue, renew, reissue or replace a blaster certificate for a term to expire as follows—

(1) Issuance of certificate—3 years from issue date;

(2) Renewal of certificate—3 years from expiration date of applicant's current certificate;

(3) Reissuance of certificate (recertification)—3 years from expiration date of applicant's current certificate;

(4) Replacement of certificate—same expiration date as applicant's lost or destroyed certificate; or

(5) Certificate through reciprocity—60 days from expiration date of corresponding State certificate.

(d) *Limit on renewal.* OSM shall not renew an OSM blaster certificate more than one time. A blaster who holds a renewed certificate and desires to extend his or her certification shall apply to OSM for recertification.

(e) *Temporary certificate.* Upon request of an applicant who demonstrates that his or her current OSM blaster certificate is about to expire, or has expired, for reasons beyond his or her control, OSM may issue a temporary OSM blaster certificate for a maximum term of 90 days.

(f) *Conditions of certification.* Any person who holds an OSM blaster certificate shall comply with the conditions specified in §§ 850.15(d) and 850.15(e) of this chapter.

**§ 855.16 Reciprocity.**

(a) Any person who holds a current blaster certificate issued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than this part may apply for an OSM blaster certificate through reciprocity.

(b) OSM shall issue, renew or reissue an OSM blaster certificate to a qualified applicant for a certificate through reciprocity who demonstrates that he or she, and whom OSM finds, has a current blaster certificate issued, renewed or reissued by a State regulatory authority under an OSM-approved State certification program with rules no less effective than this part.

(c) A person issued a OSM blaster certificate through reciprocity may apply to OSM for renewal or reissuance, and OSM shall renew or reissue such certificate, only through reciprocity and only if the corresponding State certificate was renewed or reissued by the State regulatory authority.

(d) OSM shall replace the OSM blaster certificate of any qualified applicant who presents satisfactory evidence that his or her certificate issued, renewed or reissued through reciprocity was lost or destroyed.

**§ 855.17 Suspension and revocation.**

(a)(1) OSM may, and upon a finding of willful conduct of the blaster shall, suspend for a definite or indefinite period, revoke, or take other necessary action on the certificate of a blaster for any of the reasons stated in § 850.15(b) of this chapter. OSM shall make the nature and duration of the suspension, revocation or other action commensurate with the cause of the action and what the blaster does to correct it.

(2) Where OSM has reliable information which demonstrates that the storage, use or transportation of explosives by a blaster is likely to threaten public safety or the environment, OSM shall suspend the certificate of the blaster as soon as is practicable.

(b) When practicable, OSM shall provide to the affected blaster written notice and the opportunity for an informal hearing prior to suspending, revoking or taking other action on an OSM blaster certificate. OSM shall limit any action taken without such notice and opportunity to a temporary suspension pending a decision on final suspension, revocation or other action after such notice and opportunity have been provided.

(c) By certified mail within 30 days after written notice and the opportunity for an informal hearing, OSM shall notify the affected blaster of its final decision on his or her OSM blaster certificate, including the reasons for any suspension, revocation or other action. If the affected certificate were issued through reciprocity, OSM shall notify the State regulatory authority of its action. A person whose OSM blaster certificate is suspended, revoked or subjected to other action may appeal the decision of OSM to the Department of the Interior Board of Land Appeals.

(d) Upon receiving notice of suspension, revocation or other action, a blaster immediately shall surrender to OSM his or her OSM blaster certificate.

(e) (1) A person whose OSM blaster certificate is suspended for an indefinite term may seek reinstatement by submitting to OSM evidence that the cause of the suspension has been corrected.

(2) A person whose OSM blaster certificate is revoked may apply to OSM for recertification, and shall include in his or her application evidence that the cause of the revocation has been corrected.

(f) (1) OSM shall reinstate a suspended OSM blaster certificate when the term of a definite suspension expires, or when the suspended blaster demonstrates and OSM finds that he or she has corrected the cause of an indefinite suspension, by returning the certificate to the blaster with notice of reinstatement.

(2) OSM may reissue an OSM blaster certificate to an applicant whose certificate was revoked if OSM finds that—

(i) The cause of the revocation has been corrected; and

(ii) The applicant meets all other applicable requirements of this part.

(g) OSM shall suspend, revoke or take other action on an OSM blaster certificate issued, renewed or reissued through reciprocity if the State regulatory authority suspends, revokes or takes other action on the corresponding State certificate.

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Part III

# Department of Justice

28 CFR Part 39

**Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs; Final Rule**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 39

[Order No. 1065-84]

### Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This regulation requires that the Department of Justice operate all of its programs and activities so that qualified handicapped persons are not subjected to discrimination by the Department. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for handicapped person and qualified handicapped person, and establishes a detailed complaint mechanism for resolving allegations of discrimination against the Department of Justice. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal executive agencies.

**EFFECTIVE DATE:** October 11, 1984.

**ADDRESS:** Comments received on the Notice of Proposed Rulemaking will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, NW., Washington, D.C. from 9:00 a.m. to 5:30 p.m. Monday through Friday, except for legal holidays until November 13, 1984.

**FOR FURTHER INFORMATION CONTACT:** John L. Wodatch, Deputy Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724-2227 (Voice) or 724-7678 (TDD); or L. Irene Bowen, Supervisory Attorney, Handicap Unit, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530; (202) 724-2245 (Voice) or 724-7678 (TDD). These are not toll free numbers.

**SUPPLEMENTARY INFORMATION:** On December 16, 1983, the Department of Justice published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by the Department of Justice. 48 FR 55996. Shortly after the NPRM was published, the Department received a number of preliminary comments from handicapped individuals and from organizations representing handicapped individuals. The tone and nature of these comments indicated to the Department that some of the regulatory provisions of the NPRM were being misunderstood. As a result, the Department, on March 1, 1984, published a Supplementary Notice further explaining the NPRM and requesting comments on possible revisions to the original NPRM. 49 FR 7792.

By April 16, 1984, close of the comment period, the Department received 1,194 comments. Two hundred and six of these comments also addressed the supplemental notice. Over 90% of the comments that the Department received came from individuals (908), most frequently handicapped persons, and from organizations representing the interests of handicapped persons (180). The Department received comments from all fifty states, the District of Columbia, Puerto Rico, Canada, and Denmark. Most of the comments that the Department received were general in nature. The Department received 721 comments based on a form letter. This form letter, written before issuance of the Supplemental Notice, expressed dismay at the inclusion of the regulation's "undue financial and administrative burdens" language, asserted that the Department was imposing a lesser requirement on the Federal government than on recipients of Federal assistance, and requested that the regulation be withdrawn. This form letter did not contain any substantive or detailed analysis. In fact, only 55 of the 1,194 comments contained specific, detailed analysis of the Department's proposal.

The Department read and analyzed each comment. Each comment was then subdivided according to one or more of over 90 issue categories. Because comments often addressed, even in general terms, more than one issue, the 1,194 comments were translated into 4,256 issue-specific comments. The decisions that the Department made in response to these comments, however, were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments. Copies of the written comments will remain available for public inspection in Room 854 of the HOLC Building, 320 First Street, N.W., Washington, D.C. from 9:00 a.m. to 5:30 p.m., Monday through Friday, except for legal holidays, until November 13, 1984.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Department has today submitted this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on October 11, 1984.

This rule applies to all programs and activities conducted by the Department of Justice. Thus, this rule regulates the activities of over 30 separate subunits in the Department, including, for example, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons, Federal Prison Industries, and the United States Attorneys.

#### Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of Justice (DOJ). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified handicapped individual in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794) (amendment italicized).

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general

parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1984) *id.*, 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Nine hundred and two comments that the Department received agreed that the obligations of section 504 for federally conducted programs should be identical to those developed by the Federal agencies over the past seven years for federally assisted programs. These commenters, however, objected to any language differences between the Department's proposed rule for federally conducted programs and the Department's section 504 coordination regulation for federally assisted programs (28 CFR Part 41). The commenters asserted that a number of language differences that the Department had proposed created less stringent standards for the Federal government than those applied to recipients of Federal assistance under section 504. They wrote that such a result could not be justified by Executive Order 12250, by the wording of the statute itself, nor by the legislative history of the 1978 amendments.

The commenters appear to have misunderstood the basis for inclusion of the new language in the DOJ regulation. The changes in this regulation are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

Some commenters questioned the use of *Davis* as justification for the inclusion of the new provisions in the federally conducted regulation. They noted that the Department had not included these changes when, subsequent to the *Davis* decision, it issued a regulation implementing section 504 in programs receiving Federal financial assistance from this Department. The Department's section 504 federally assisted regulation, however, was issued prior to the D.C. circuit's decision in *APTA*. In *APTA*, the Department had argued a position similar to that advocated by the commenters. Judge Abner Mikva's decision in *APTA* clearly rejected the Department's position in that case. Other circuit court decisions followed the *APTA* interpretation of *Davis*. Since these decisions, the Department has interpreted its section 504 regulation for federally assisted programs in a manner consistent with the language of this final rule. The Department believes that judicial interpretation of section 504 compels it to incorporate the new language in the federally conducted regulation.

Incorporation of these changes, therefore, makes this section 504 federally conducted regulation consistent with the Federal government's section 504 federally assisted regulations. Because many of these federally assisted regulations were issued prior to the judicial interpretations of *Davis* and its progeny, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Department believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

**Section-by-Section Analysis and Response To Comments**

*Section 39.101 Purpose*

Section 39.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

The Department received no comments on this section and it remains unchanged from the Department's proposed rule.

*Section 39.102 Application*

The regulation applies to all programs or activities conducted by the Department of Justice. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the Department for program beneficiaries and participants. Activities in the first part include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Department's facilities (cafeteria, library). Activities in the second category include programs that provide Federal services or benefits (immigration activities, operation of the Federal prison system). No comments were received on this section.

*Section 39.103 Definitions*

The Department received 469 comments on the definitions section. Most of the comment, however, concentrated on the definition of "qualified handicapped persons."

"Agency" is defined as the Department of Justice.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 39.160(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 180 day period for the agency's investigation (*see* § 39.170(g)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504

coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted.

Twenty commenters on the NPRM objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the Supplemental Notice, the term "facility," as used in this regulation, refers to structures, and does not include intangible property rights. The definition, therefore, has no effect on the scope of coverage of programs, including those conducted in facilities not included in the definition. The phrase has been omitted because the requirement that facilities be accessible would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. The regulation applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. Sixty commenters supported the clarification of this issue in the Supplemental Notice.

"Handicapped person." The definition of "handicapped person" has been revised to make it identical to the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). In its NPRM, the Department omitted the list of physical or mental impairments included in the definition of "handicapped persons." The Department received 19 negative comments on this omission, and, in the Supplemental Notice, requested comments on whether it should be re-inserted. On the basis of the comments received, we have included the list in the final rule.

"Qualified handicapped person" The definition of "qualified handicapped person" is a revised version of the definition appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Subparagraph (1) of the definition states that a "qualified handicapped person" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment is a handicapped person who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition is based on the Supreme Court's *Davis* decision.

In *Davis,* the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

The Department incorporated the Court's language in the definition of "qualified handicapped person" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable a handicapped applicant to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some handicapped people from some programs, it requires that a handicapped person who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two hundred and forty-four commenters objected to this revised definition for a veriety of reasons. Several commenters stated that the Department incorrectly used *Davis* as the justification for explaining the differences between the federally assisted and the federally conducted regulations because the Supreme Court upheld the validity of the existing regulations in *Consolidated Rail Corp.* v. *Darrone,* 104 S. Ct. 1248 (1984). This view misunderstands the Court's actions in *Darrone.* In that case the Court ruled on a series of issues, the most important of which was under what circumstances section 504 applied to employment discrimination by recipients. The Court did not concern itself either directly or indirectly with the definition of "qualified handicapped person" or whether section 504 included limitations based on "undue financial and administrative burdens."

Many commenters stated that the proposal would change the difinition of qualified handicapped person for employment. "Qualified handicapped person" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 39.140. Nothing in this part changes existing regulations applicable to employment.

Many commenters assumed that the definition would have the effect of placing on the handicapped person the burden of proving that he or she is qualified. The definition has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§39.150(a)(2) and 39.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the handicapped person to achieve the purpose of the program but would not result in such an alteration.

Some commenters said that the definition of "qualified handicapped person" places handicapped persons in a "Catch-22" situation: because only qualified handicapped persons are protected by the statute, a determination that a person is not qualified would make enforcement remedies unavailable to that person. This concern is misplaced. If the Department determined that a handicapped person was not "qualified," the person could use the procedures established by § 39.170 to challenge that determination, just as he or she could challenge any other decision by the agency that he or she believed to be discriminatory.

Many commenters argued that the definition of "qualified handicapped person" confused what should be two separate inquiries: whether a person meets essential eligibility requirements and, if so, whether accommodation is required. They argued that the reference to "fundamental alteration" in the

definition focuses attention on accommodations rather than on a handicapped person's abilities. As another commenter noted, however, the Supreme Court in *Davis* developed the "fundamental alteration" language in a decision that was determining the nature and scope of what constitutes a qualified handicapped person. The Department continues to believe that the concept of "qualified handicapped person" properly encompasses both the notion of "essential eligibility requirements" and the notion of program modifications that might fundamentally alter a program.

Some commenters argued that our analysis of *Davis* was inappropriate because *Davis* was decided on the basis of individual facts unique to that case or because *Davis* involved federally assisted and not federally conducted programs. While cases are decided on the basis of specific factual situations, courts, especially the Supreme Court, develop general principles of law for use in analyzing facts. The *Davis* decision was the Supreme Court's first comprehensive view of section 504, a major new civil rights statute. The *Davis* holding, that a person who cannot achieve the purpose of a program without fundamental changes in its nature is not a "qualified handicapped person," is a general principle, a statement by the Court on how it views section 504. It is therefore necessary to reflect it in the Department's regulation.

Subparagraph (2) of the definition adopts the existing definition in the coordination regulation of "qualified handicapped person" with respect to services for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this part of the definition, a qualified handicapped person is a handicapped person who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

*Section 39.110 Self-evaluation*

This section requires that the agency conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with handicapped persons that promotes both effective and efficient implementation of section 504.

In response to preliminary comments that the proposed rule had no specific criteria for conducting a self-evaluation, we requested comment on a proposed alternative in our Supplemental Notice (49 FR 7792). We received 64 comments, 57 of which were positive. The comments generally favored adoption of the alternative section, instead of the proposed section. We agree.

With respect to the applicability of the Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) (FACA), several comments were received. They argued that the FACA is not intended to apply to meetings with a self-evaluation group comprised of private individuals because they are rather unstructured, ad hoc meetings.

Authority for interpreting FACA was delegated to the General Services Administration (GSA) by Executive Order 12024 in 1977. Regulations issued by GSA place specific limitations on the scope of the Act by delineating examples of meetings or groups *not* covered. 41 CFR Part 101–6. GSA identified a major issue in the promulgation of the regulations to be the extent of applicability of the Act

> Some commenters believe, as a matter of general policy, that advisory groups which are not formally structured, which do not have a continuing existence, which meet to deal with specific issues, and whose meetings do not constitute an established pattern of conduct should not be covered under the Act. * * * This rule reflects our judgment that the exclusion of certain non-recurring meetings from the Act's coverage is fully consistent with the statute, its legislative history, and judicial interpretation. * * * The interim rule provides guidance for those meetings between Federal officials and non-Federal individuals which do not fall within the scope of the Act, and for which a charter and consultation with GSA is not required.
>
> 48 FR 19324 (Preamble to interim rules).

The regulations define "advisory committee" in pertinent part as:

> Any committee, board, commission, council, conference, panel, task force or other similar group * * * established by * * * or *utilized by* * * * any agency official *for the purpose of obtaining advice or recommendations on issues or policy* which are within the scope of his or her responsibilities.
>
> 41 CFR 101–6. 1003 (emphasis added).

In turn, "utilized" is defined in pertinent part as a

> group * * * which * * * agency official(s) *adopts,* such as through institutional arrangements, *as a preferred source from which to obtain advice or recommendations on a specific issue* or policy within the scope of his or her responsibilities *in the same manner* as that *individual would obtain advice or recommendations from an established advisory committee.*
>
> 41 CFR 101–6.1003 (emphasis added).

The GSA regulation further provides that the Act does not apply to

> (g) Any meeting initiated by the President or one or more Federal official [sic] for the purpose of obtaining advice or recommendations from one individual;
>
> (h) Except with respect to established advisory committees:
>
> (1) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information; or
>
> (2) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;
>
> * * * * *
>
> (j) Any meeting initiated by a Federal official(s) with more than one individual for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.
>
> 41 CFR 101–6.1004 (g), (h), and (j).

This final rule provides that the agency shall provide an opportunity for interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process and development of transition plans by submitting comments (both oral and written).

*Section 39.111 Notice*

The Department received negative comments on its omission of a paragraph routinely used in section 504 regulations for federally assisted programs requiring recipients to inform interested persons of their rights under section 504. In the Department's Supplemental Notice, we requested comments on inclusion of specific regulatory language. Fifty-four positive comments were received. As a result, the Department has incorporated that new provision on notice into the final rule. It appears as § 39.111.

Section 39.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 of this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to

describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 39.111 is, in fact, a broader and more detailed version of the proposed rule's requirement (at § 39.160(d)) that the agency provide handicapped persons with information concerning their rights. Because § 39.111 encompasses the requirements of proposed § 39.160(d), that latter paragraph has been deleted as duplicative.

*Section 39.130 General prohibitions against discrimination*

Section 39.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51). This regulatory provision attracted relatively few public comments and has not been changed from the proposed rule.

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 39.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 39.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of handicapped persons. The agency may not refuse to provide a handicapped person with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligiblity requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Subparagraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to a handicapped person be as effective as that afforded to others. The later sections on program accessibility (§§ 39.149–39.151) and communications (§ 39.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, subparagraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide handicapped persons with an equal opportunity to participate in or benefit from the agency's programs or activities. Subparagraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, subparagraph (b)(2) provides that a qualified handicapped person still has the right to choose to participate in the program that is not designed to accommodate handicapped persons.

Subparagraph (b)(1)(v) prohibits the agency from denying a qualified handicapped person the opportunity to participate as a member of a planning or advisory board.

Subparagraph (b)(1)(vi) prohibits the agency from limiting a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Subparagraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny handicapped persons access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This subparagraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny handicapped persons an effective opportunity to participate.

Subparagraph (b)(4) specifically applies the prohibition enunciated in § 39.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Subparagraph (b)(4) does not apply to construction of additional buildings at an existing site.

Subparagraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

Subparagraph (b)(6) prohibits the agency from discriminating against qualified handicapped persons on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* § 39.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate in an impermissible manner against the employment of qualified handicapped persons.

Subparagraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of its operations.

Twenty-three commenters argued that the regulation should extend to the activities of licensees or certified entities, citing *Community Television of Southern California* v. *Gottfried*, 103 S. Ct. 885 (1983). In that case, the Court held that section 504 as applied to federally assisted programs did not require the Federal Communications Commission to prohibit discrimination on the basis of handicap by licensed broadcasters, but that "the policies

underlying the Communications Act" might authorize the Commission to issue a regulation governing such discrimination. The Court did not, however, indicate that section 504 itself could serve as the source of such regulatory authority.

The Court has held that "the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather the words take meaning from the purposes of the regulatory legislation." *National Association for the Advancement of Colored People* v. *Federal Power Commission*, 425 U.S. 662, 669 (1976). In our view, section 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities. Where an agency has existing regulatory authority that is broad enough to enable it to establish a nondiscrimination requirement for its licensees or certified entities, section 504 may support the exercise of that authority. Because the Department of Justice has no such underlying authority, it cannot prohibit discrimination by licensees.

Twenty-two commenters objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the agency would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only handicapped persons or a given class of handicapped persons may be limited to those handicapped persons.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

*Section 39.140 Employment*

Section 39.140 prohibits discrimination on the basis of handicap in employment by the agency. Comments on proposed § 39.140 identified two types of problems. First, several commenters felt that the rule's treatment of employment was not sufficiently comprehensive. They pointed out that the rule does not enumerate the employment practices covered (*e.g.*, hiring, promotion, assignment); it does not say what must be done to avoid or correct possible discrimination (*e.g.*, reasonable accommodation, review of preemployment tests, limitations on preemployment inquiries and the use of medical examinations); nor does it define a "qualified handicapped person" with respect to employment.

Second, one commenter objected to the rule's adoption of "the definitions, requirements and procedures of section 501 of the Rehabilitation Act" as established in rules of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. This commenter argued that EEOC's rules on physical examinations were too restrictive and claimed that the proposed rule did not limit employment coverage to the program conducted by the Federal government in a manner similar to the "program or activity" limitation on coverage of programs receiving Federal financial assistance. Finally, the commenter asserted that reliance on section 501 was misplaced because that section of the Rehabilitation Act requires affirmative action whereas section 504, which the rule implements, contains only a nondiscrimination requirement.

The original notice of proposed rulemaking explained that the regulation is in accord with *Prewitt* v. *United States Postal Service*, 662 F.2d 292 (5th Cir. 1981), which held that Congress intended section 504 to cover the employment practices of Executive agencies. In *Prewitt*, the court also held that, in order to give effect to sections 501 and 504, both of which cover Federal employment, the administrative procedures of section 501 must be followed. Accordingly, the proposed rule adopted the definitions, requirements and procedures of section 501 as established in EEOC's rules.

The final rule has not been changed. The Department intends to avoid duplicative, competing or conflicting standards under the Rehabilitation Act with respect to Federal employment. While the rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, reference to the Government-wide rules of the Equal Employment Opportunity Commission is sufficient and avoids duplication. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

*Section 39.149 Program accessibility: Discrimination prohibited*

The proposed regulation did not contain a general statement of the program accessibility requirement similar to that appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.56). The decision not to include this language in the proposed regulation created the misperception that a change in substance was intended. In order to remedy this misunderstanding, the Supplemental Notice requested comments on explicitly including it. Sixty-two commenters favored inclusion of the specific regulatory language that was published in the Supplemental Notice. Consequently, the final rule has been revised to include the language of the Supplemental Notice. The language appears at § 39.149.

*Section 39.150 Program accessibility: Existing facilities*

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 39.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by handicapped persons. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 39.150(a)(1)). However, § 39.150, unlike 28 CFR 41.56–41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 39.150(a)(2)). This provision provoked 959 comments, the largest number received on any single issue. Most commenters sought the deletion of the "undue financial and administrative burdens" language from the regulation. On the basis of preliminary comments on this paragraph, the Department published clarifying language in its Supplemental Notice. The final version includes that clarification.

The "undue financial and administrative burdens" language (found at §§ 39.150(a)(2) and 39.160(d)) is based on the Supreme Court's *Davis* holding that section 504 does not require program modifications that result in a fundamental alteration in the nature of a

program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis, supra* (APTA). In *APTA* the United States Court of Appeals for the District of Columbia Circuit applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation (DOT). The court in *APTA* noted "that at some point a transit system's refusal to take modest, affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of subparagraph (a)(2) is an effort to conform the agency's regulation implementing section 504 to the Supreme Court's interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This subparagraph acknowledges, in light of recent case law, that, in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. The failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

Many commenters argued that the Supreme Court's decision in *Davis* did not require inclusion of an undue burdens defense in this regulation. These commenters asserted that the holding in *Davis* was that the plaintiff was not a qualified handicapped person and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. These commenters overlook the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982).

Many commenters argued that inclusion of the undue burdens defense was inconsistent with the position taken by Vice President Bush in his letter of March 21, 1983, in which he announced the Administration's decision not to revise the coordination regulation for federally assisted programs. The decision to include the undue burdens defense represents no contradiction with the position taken by Vice President Bush on the guidelines for federally assisted programs. In his letter the Vice President stated that "extensive change of the existing 504 coordination regulations was not required, and that with respect to those few areas where clarification might be desirable, the courts are currently providing useful guidance and can be expected to continue to do so in the future." One element of that "useful guidance" obviously comes from interpretations of the *Davis* decision by the lower Federal courts.

The Department has carefully considered the comments on the process that the Department should follow in determining whether a program modification would result in undue financial and administrative burdens. The Department intends to be guided by six principles in its application of the "fundamental alteration" and "undue financial and administrative burdens" language.

First, because of the extensive resources and capabilities that could properly be drawn upon for section 504 purposes by a large Federal agency like the Department of Justice, the Department explicitly acknowledges that, in most cases, making a Department program accessible will likely not result in undue burdens. Second, the burden of proving that the accommodation request will result in a fundamental alteration or undue burdens has been placed squarely on the Department of Justice, not on the handicapped person. Third, in determining whether financial and administrative burdens are undue, the Department is to consider all Department resources available for use in the funding and operation of the conducted program. Fourth, the "fundamental alteration"/"undue burdens" decision is to be made by the Attorney General or his designee and must be accompanied by a written statement of reasons for reaching such a conclusion. Fifth, if a disabled person disagrees with the Attorney General's finding, he or she can file a complaint under the complaint procedures established by the final regulation. A significant feature of this complaint adjudication procedure is the availability of a hearing before an independent administrative law judge under the due process protections of the Administrative Procedure Act. Sixth and finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Department must still take action, short of that outer limit, that will open participation in the Department's program to disabled persons to the fullest extent possible.

One hundred and eighty-one commenters on the Supplemental Notice objected to the provision that the "undue burdens" decision would be based on consideration of "all agency resources available for use in the funding and operation of the conducted program," arguing that it should be based on the resources of the agency as a whole. Some argued that this formulation was required because all agency resources come from taxpayer monies and should not be used to support discrimination.

The Department's entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Many parts of the Department's budget are earmarked for specific purposes and are simply not available for use in making the Department's programs accessible to disabled persons. For example, funds for the operation of the Bureau of Prisons are unavailable for defraying the cost of a sign language interpreter at a deportation hearing conducted by the Immigration and Naturalization Service. There are extensive resources available to the Department and it is expected that the Department will, only on very rare occasions, be faced with "undue burdens" in meeting the program accessibility or communications sections of the regulation.

One commenter said that the term "undue hardship" used in regulations for federally assisted programs is more specific and less discriminatory than the term "undue burdens." The term "undue hardship" is a term of art used in connection with employment. The term "undue burdens" is taken from the Supreme Court's opinion in *Davis* and is appropriately included in this regulation.

Some commenters argued that section 504 creates an absolute right to acce-, and that cost cannot limit this right, although it may be a factor in determining timeframes for compliance. Section 504 does not create an absolute right to access. The Supreme Court stated in *Davis* that recipients need not

undertake modifications to their programs to meet the requirements of section 504 that would result in "undue financial and administrative burdens." This understanding of section 504 and its implementing regulations for federally assisted programs is shared by the lower Federal courts, which have routinely applied the "undue burdens" limitation to accessibility issues. Congress suggested no different interpretation of section 504 when applying it to federally conducted programs. Spreading the cost of compliance over a period of time is, however, one way of avoiding undue financial and administrative burdens, and the Department will consider that as an option whenever it considers asserting that defense.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of handicapped persons. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

*Section 39.151 Program accessibility: New construction and alterations*

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 39.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by handicapped persons in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). It is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required to meet the new construction standard. They are subject, however, to the requirements of § 39.150.

A commenter has recommended that the regulation should require that buildings leased after the effective date of the regulation should meet the new construction standards of § 39.151, rather than the program accessibility standard for existing facilities in § 39.150. Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Department believes the same program accessibility standard should apply to both owned and leased existing buildings.

*Section 39.160 Communications*

Section 39.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps include procedures for determining when auxiliary aids are necessary under § 39.160(a)(1) to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They also include an opportunity for handicapped persons to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency (§ 39.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 39.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble § 39.150(a)(2)). Unless not required by § 39.160(d), the agency shall provide auxiliary aids at no cost to the handicapped person.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford handicapped persons an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids when several different modes are effective.

The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency, *e.g.*, INS deportation proceedings. Auxiliary aids in these proceedings must be afforded where they are necesssary to ensure effective communication at the proceedings. When sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 39.160(a)(1)(ii)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Some commenters suggested that the Department's language in § 39.160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use or study be modified to state that such devices are not required for "nonprogram material." This suggestion has not been adopted

because it is less clear than the existing formulation, which is intended to distinguish between communications that are necessary to obtain the benefits of the federal programs and those that are not and which parallels the requirements of the Federal government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Several comments suggested that the definition of auxiliary aids should include attendant services that may be needed to aid disabled persons to travel to meetings. Other comments recommended that in some cases attendant services may be an appropriate auxiliary aid to achieve program accessiblity.

The Department has not adopted the approach recommended by these comments.To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. For example, the services of a sign language interpreter make a workshop as available to any deaf participant as it is to other participants. The need for services of interpreters arises directly out of the presentation of information in a form that can be understood by hearing persons. However, the Department views the services of an attendant for a disabled person as generally personal in nature and not directly related to the federally conducted program.

A different conclusion, however, might be reached for Federal employees or other persons traveling for the agency. Where a disabled person who is unable to travel without an attendant is required to perform official travel, the travel expenses of an attendant, including per diem and transportation expenses, may be paid by the Department. See 5 U.S.C. 3102(d) (1982).

Paragraph (b) requires the agency to provide information to handicapped persons concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

*Section 39.170 Compliance procedures*

Section 39.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in the Department of Justice's programs and activities. The 1978 amendments to section 504 failed to provide a specific statutory remedy for violations of section 504 in federally conducted programs. The amendment's legislative history suggesting parallelism between section 504 for federally conducted and federally assisted programs is unhelpful in this area because the fund termination mechanism used in section 504 federally assisted regulations depends on the legal relationship between a Federal funding agency and the recipients to which the Federal funding is extended. The Department has decided that the most effective and appropriate manner in which to enforce section 504 in the federally conducted area is through an equitable complaint resolution process. Section 39.170 establishes this process.

The complaint process in the final rule is substantially the same as the one that the Department proposed. The Department received 57 comments on this section. These comments did not question the use of a complaint-responsive enforcement scheme as appropriate for section 504 for federally conducted programs. The Department continues to view its specific proposal as satisfactory.

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests in the Responsible Official the responsibility for the overall management of the 504 compliance program. "Responsible Official" or "Official," as defined in § 39.103, refers to the Director of Equal Employment Opportunity, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 39.170. The definition of "Official" includes other Department Officials to whom authority has been delegated by the Official. The Assistant Attorney General for Administration has been designated as the Director of Equal Employment Opportunity for the Department. *See* 28 CFR 42.2(a).

Although one person has responsibility both for administering the Equal Employment Opportunity Program for the Department and for coordinating implementation of the compliance procedures under this part, the procedures for carrying out these two responsibilities are different. The Official would follow the procedures for enforcing equal employment opportunity, as set forth in 29 CFR Part 1613, only for complaints alleging employment discrimination (see § 39.170(b)). Other complaints would be processed under the procedures in § 39.170. Authority for processing complaints of employment discrimination has been delegated to Equal Employment Opportunity Officers in some Department components, and it is expected that authority for enforcing this part will be similarly delegated.

Subparagraphs (d) (1) and (3) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows good cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably be expected to know of the act or event said to be discriminatory.

Several commenters argued that the proposed rule unnecessarily restricted the right to file a complaint by not allowing an individual victim of discrimination to authorize a representative to file on his or her behalf. The final rule permits filing by the authorized representative of an individual victim, or, in the case of class discrimination, of a member of the class, as well as by an individual victim or class member. The final rule has been revised to make it clear that complaints alleging that a specific class of persons has been discriminated against may only be filed by a member of that specific class or by a representative authorized to file the complaint by a member of that class (§ 39.170(d)(1)).

The Federal Bureau of Prisons has established an Administrative Remedy Procedure for handling grievances of inmates of Federal penal institutions (28 CFR Part 542). This procedure allows an inmate to file a formal written complaint with the Warden of the Institution or with the Regional Director. While these remedies are not a substitute for the right to an independent investigation by a civil rights office and appeal to the Complaint Adjudication Officer, the final rule requires inmates to exhaust these procedural remedies before filing a complaint with the Official. The time period for filing a complaint with the Official would be extended by the time spent exhausting these remedies. This requirement applies only to inmates and does not extend to visitors and employees.

The Department received several comments on how prisoners' complaints should be handled. Some of them suggested that both the discrimination procedure and the prison grievance procedures should be invoked simultaneously. The Department believes that this proposal would require the unnecessary duplication of efforts without materially enhancing results. The Bureau of Prisons reported that thousands of inmate complaints were filed in 1983 alone and that several court decisions have held that the inmate administrative remedy procedure must be exhausted before suit can be filed. Although the volume of complaints by prison inmates might be burdensome, it is not possible now to forecast the number that will be filed. The Department believes, however, that handicapped prisoners must be afforded the right to have their complaints investigated by an office that specializes in discrimination complaints, including section 504 complaints, as well as the right to appeal to the Complaint Adjudication Officer. It is expected that the requirement that inmates first exhaust prison administrative remedies will be effective in resolving most meritorious complaints. It may be necessary, of course, for the Department to provide additional resources to handle complaints filed under the new regulation.

Subparagraph (d)(2) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Attorney General, the Responsible Official, or other agency officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (subparagraph (d)(4)).

Paragraph (e) requires the agency to send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility subject to the Architectural Barriers Act or section 502 was designed, constructed, or altered in a manner that does not provide ready access to and use by handicapped persons.

The Official is required to accept all complete complaints over which the agency has jurisdiction (§ 39.170(f)(1)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 39.170(f)(3)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of subparagraph (d)(3), but the timeframes governing the Official's other obligations to process the complaint (*see, e.g.*, § 39.170(g)(1), § 39.170(h)) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 39.170(h)). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

In response to a suggestion from a commenter, the Department no longer refers to the letter of findings as "preliminary." The word "preliminary" has been deleted because, if there is no appeal, the determination made in the letter of findings will constitute the final agency decision.

Paragraph (h) requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if discrimination is found, and notice of the right to appeal. The regulation provides that a party may appeal the Official's letter or findings to the Complaint Adjudication Officer (CAO). If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 39.170(i)(4)).

The Department's final rule provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the CAO, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an administrative law judge can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

The opportunity for a hearing before an ALJ assures more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. The Department expects that agency decisions based on a hearing record would more likely survive later judicial review.

Under the regulation, another person or organization would be allowed to participate as a third party or amicus curiae if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not duly delay the outcome, and that petitioner's participation may contribute materially to the disposition of the proceedings.

The Department received comments on the proposed opportunity for a hearing before an administrative law judge. Some commenters were primarily concerned that by invoking a hearing before the ALJ with the procedural safeguards adopted from the Administrative Procedure Act (APA) (5 U.S.C. 554–557), the complainant would lose the right to a *de novo* review of the agency's final decision, because the APA allows a Federal court only to determine if the agency's final decisions are "arbitrary and capricious" (5 U.S.C. 706(2)(A)). It is beyond our jurisdiction to specify that a *de novo* review is available to complaints seeking judicial review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of the availability of a private right of action, either without invoking our compliance procedures or after the issuance of letters of findings.

Given the inherent conflicts of interest in situations where complaints allege discrimination on the part of the Department, it is critically important to ensure that a complaint be reviewed in a fair, independent process. The availability of a hearing before an independent ALJ would provide the appearance as well as the actuality of an impartial compliance mechanism. The Department has therefore included the provision for a hearing in the final regulation.

One comment requested the addition of a provision whereby the Department would award attorneys fees to complainants. Another comment suggested that the Equal Access to Justice Act (5 U.S.C. 504) might provide for the award of fees. Nothing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment. Nor does the EAJA and the Department's implementing regulations at 28 CFR Part 24 provide for

such awards in hearings conducted under § 39.170(k). We have therefore included no attorneys fee provision in the current regulations.

Under paragraph (1), the CAO renders a final agency decision after appeal without a hearing or after a hearing. The CAO directs appropriate remedial action if discrimination is found. The CAO's decision will involve reviewing the entire file, including the investigation report, letter of findings, and, if a hearing was held, the hearing record and recommended decision of the administrative law judge. The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter objected to the requirement in subparagraph (l)(1) that the CAO explain specifically a decision to reject or modify the ALJ's proposed findings, arguing that it would inappropriately limit the CAO's consideration of the issues. We have adopted the suggestion and eliminated the requirement.

In response to recommendations from the Department's CAO and the Drug Enforcement Administration's ALJ, some changes have been made in the compliance procedures. Among the changes are a new requirement that the ALJ provide findings to all parties, not just the CAO, an added provision for filing exceptions to an ALJ's recommended decision, a delineation of the authorities of the ALJ, and a clarification of the responsibility for supervising compliance with the final agency decision between the Responsible Official and the CAO.

The Department also received some comments on the appropriateness of providing for an appeal by either the complainant or respondent. Some commenters objected to allowing a respondent to obtain an administrative appeal because it could delay remedying discrimination. On the other hand, an impartial adjudicatory mechanism would require that opportunity is provided for both sides to appeal. For this reason, the Department finds it necessary and appropriate for both complainant and respondent to have the right to an administrative appeal.

**List of Subjects in 28 CFR Part 39**

Blind, Civil rights, Equal educational opportunity, Equal employment opportunity, Federal buildings and facilities, Handicapped.

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301, and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and for the reasons set forth in the preamble, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

Part 39 is added to 28 CFR Chapter I to read as follows:

## PART 39—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

Sec.



**Authority:** 29 U.S.C. 794.

### § 39.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 39.102 Application.

This part applies to all programs or activities conducted by the agency.

### § 39.103 Definitions.

For purposes of this part, the term—

"Agency" means the Department of Justice.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complaint Adjudication Officer" means the Complaint Adjudication Officer appointed by the Assistant Attorney General for Civil Rights.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitorurinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or

has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

"Official" or "Responsible Official" means the Director of Equal Employment Opportunity of the Department of Justice or his or her designee.

"Qualified handicapped person" means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Respondent" means the organizational unit in which a complainant alleges that discrimination occurred.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

**§§ 39.104–39.109 [Reserved]**

**§ 39.110 Self-evaluation.**

(a) The agency shall, by October 11, 1985, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until October 11, 1987, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

**§ 39.111 Notice.**

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activities conducted by the agency, and make such information available to them in such manner as the Attorney General finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

**§ 39.112–39.129 [Reserved]**

**§ 39.130 General prohibitions against discrimination.**

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive

order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activites in the most integrated setting appropriate to the needs of qualified handicapped persons.

**§§ 39.131–39.139 [Reserved]**

**§ 39.140 Employment.**

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 39.141–39.148 [Reserved]**

**§ 39.149 Program accessibility: Discrimination prohibited.**

Except as othewise provided in § 39.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

**§ 39.150 Program accessibility: Existing facilities.**

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration on such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by December 10, 1984, except that where structural changes in facilities are undertaken, such changes shall be made by October 11, 1987, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by April 11, 1985, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, at the time identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

**§ 39.151 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101.19–600 to 101.19–607, apply to buildings covered by this section.

**§§ 39.152–39.159 [Reserved]**

**§ 39.160 Communications.**

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its

inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 39.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Attorney General or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

**§§ 39.161–39.169 [Reserved]**

**§ 39.170 Compliance procedures.**

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) *Employment complaints.* The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) *Responsible Official.* The Responsible Official shall coordinate implementation of this section.

(d) *Filing a complaint.* (1) *Who may file.* (i) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(ii) Before filing a complaint under this section, an inmate of a Federal penal institution must exhaust the Bureau of Prisons Administrative Remedy Procedure as set forth in 28 CFR Part 542.

(2) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, except that complaints by inmates of Federal penal institutions shall be filed within 180 days of the final administrative decision of the Bureau of Prisons under 28 CFR Part 542. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this subparagraph, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the agency.

(4) *How to file.* Complaints may be delivered or mailed to the Attorney General, the Responsible Official, or agency officials. Complaints should be sent to the Director for Equal Employment Opportunity, U.S. Department of Justice, 10th and Pennsylvania Avenue, N.W., Room 1232, Washington, D.C. 20530. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

(e) *Notification to the Architectural and Transportation Barriers Compliance Board.* The agency shall promptly send to the Architectural and Transportation Barriers Compliance Board a copy of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–5157), or section 502 of the Rehabilitation Act, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons. The agency shall delete the identity of the complainant from the copy of the complaint.

(f) *Acceptance of complaint.* (1) The Official shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(2) If the Official receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(3) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(g) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings.

(2) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made part of the complaint file, with a copy of the agreement provided to the complainant and respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and respondent have agreed.

(h) *Letter of findings.* If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right of the complainant and respondent to appeal

to the Complaint Adjudication Officer; and

(4) A notice of the right of the complainant and respondent to request a hearing.

(i) *Filing an appeal.* (1) Notice of appeals to the Complaint Adjudication Officer, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt from the Official of the letter required by paragraph (h) of this section.

(2) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for hearing within the time limit specified in paragraph (i)(1) of this section or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(3) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Complaint Adjudication Officer.

(4) If neither party files an appeal within the time prescribed in paragraph (i)(1) of this section, the Responsible Official shall certify that the letter of findings is the final agency decision on the complaint at the expiration of that time.

(j) *Acceptance of appeal.* The Responsible Official shall accept and process any timely appeal. A party may appeal to the Complaint Adjudication Officer from a decision of the Official that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Official.

(k) *Hearing.* (1) Upon a timely request for a hearing, the Responsible Official shall appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The administrative law judge may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly delay the outcome and may contribute materially to the proper disposition of the proceedings.

(3) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557 (sections 5–8 of the Administrative Procedure Act). The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(i) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing.

(iii) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties.

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

(4) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph, but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge whenever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(5) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Persons employed by the agency, shall, upon request to the agency by the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing shall, at the request of the administrative law judge and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(v) The respondent shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(6) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Complaint Adjudication Officer within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Complaint Adjudication Officer.

(7) Within 15 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to the decision with the Complaint Adjudication Officer. Thereafter, each party will have ten days to file reply exceptions with the Officer.

(l) *Decision.* (1) The Complaint Adjudication Officer shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 39.170(i)(2)(ii) or after the period for filing exceptions ends, whichever is applicable. If the Complaint Adjudication Officer determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Complaint Adjudication Officer shall have 60 days from receipt of the additional information to render the decision on the appeal. The Complaint Adjudication Officer shall transmit his or her decision by letter to the parties. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Complaint Adjudication Officer shall consider the

recommended decision of the administrative law judge and render a final decision based on the entire record. The Complaint Adjudication Officer may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final decision has not yet been taken; and

(iii) The steps being taken to ensure full compliance.

The Complaint Adjudication Officer may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision, or for specific adjudicatory decisions arising out of implementation.

**§§ 39.171–999 [Reserved]**

Dated: September 5, 1984.

**William French Smith,**

*Attorney General.*

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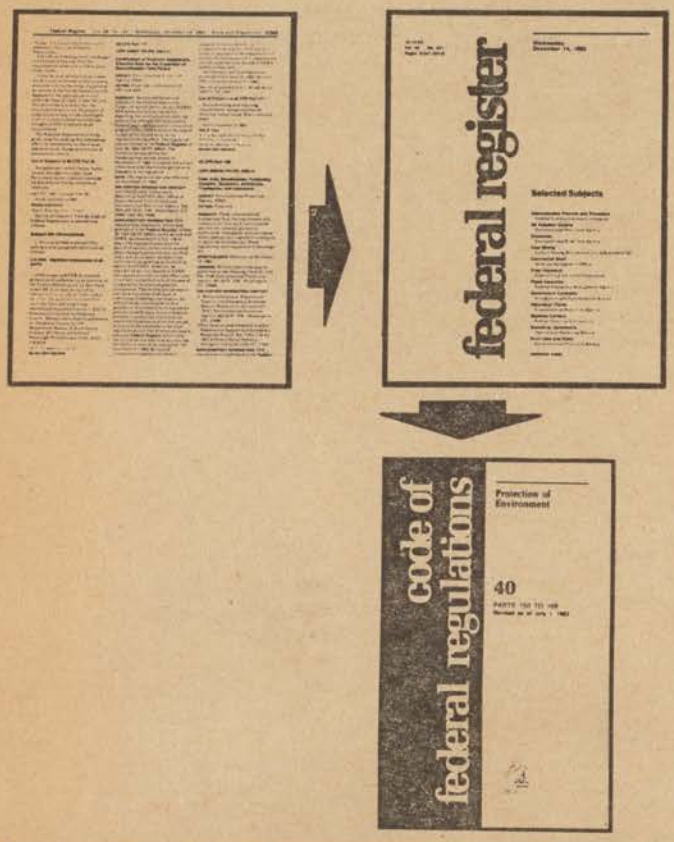


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